

SECRET

**No. 1/13/2013 - IR**  
**Government of India**  
**Ministry of Personnel, Public Grievances & Pensions**  
**Department of Personnel and Training**

*North Block,  
New Delhi- 110001.  
Dated the 23<sup>rd</sup> July, 2013*

**NOTE FOR THE CABINET**

**Subject: Proposal for an amendment to the Right to Information Act, 2005  
in the light of the decision of Central Information Commission  
dated 03.06.2013 in the case of political parties.**

**1. INTRODUCTION:**

1.1 The Right to Information Act, 2005 (the RTI Act) provides right to information to all the citizens of India and casts obligation on the public authorities to provide information which is held by or under the control of such public authorities. A public authority is defined in the RTI Act itself. Expanding the scope of definition of the Public authority, the Central Information Commission (CIC) in its decision dated 3<sup>rd</sup> June, 2013 has held that the political parties namely AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act. A copy of the said CIC decision is placed at Annexure I (Pg 11). This note proposes to bring a bill to amend the RTI Act to explicitly exclude the political parties from the definition of the Public authority for the purpose of the RTI Act.

**2 BACKGROUND:**

2.1 The Right to Information Act, 2005 was enacted by the Government of India for setting out the practical regime of Right to Information for Citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. A public authority is defined in section 2 (h) of the Act as under:

*“public authority” means any authority or body or institution of self-government established or constituted-*

*a) by or under the Constitution;*

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- b) by any other law made by Parliament;*
- c) by any other law made by State Legislature;*
- d) by notification issued or order made by the appropriate Government,*

*and includes any-*

- i. body owned, controlled or substantially financed;*
- ii. non-Government organisation substantially financed;*

*directly or indirectly by funds provided by the appropriate Government.*

2.2 In its decision dated 03.06.2013 in a complaint by Shri Subhash Chandra Aggarwal and Shri Anil Bairwal, the Central Information Commission has held that the political parties namely AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act. The CIC has further directed the presidents, general secretaries of those political parties to designate CPIOs and the Appellate Authorities at the headquarters in 6 weeks time. Further, it directed the presidents, general secretaries of those political parties to comply with the provisions of Section 4(1)(b) of the RTI Act, 2005 by way of making voluntary disclosures on the subject mentioned in the said clause.

2.3 While deciding that the said political parties are public authorities under Section 2(h) of the RTI Act, the CIC has relied on the following grounds:-

- i. Political parties can be said to have been constituted by their registration by the Election Commission of India, a fact akin to the establishment or constitution of a body or institution by an appropriate government.
- ii. Substantial (indirect) financing of political parties by the Central Governments. This includes allotment of land to them at hugely concessional rates, allotment of houses on rental basis on concessional rates, total exemption from payment of income tax from their incomes, free airtime on All India Radio, Doordarshan.
- iii. Performance of public duty by the political parties.
- iv. Constitutional/Legal provisions vesting political parties with rights and liabilities.

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2.4 In the past, in a series of decisions, Hon'ble High Courts and CIC have held a number of non – Government organisations as public authorities under the RTI Act. In WP(C) no. 876/2007, the Delhi High Court has held that Indian Olympic Association is a public authority on the grounds that it is an Olympics sports regulator in this country and is consistently funded by the Government, though for the limited purpose. Similarly, CIC has held Chandigarh Lawn Tennis Association, Chandigarh Club, India International Centre and Delhi Public School, Rohini as public authorities on the grounds of substantial financing by the Government.

**3. PROPOSAL:**

3.1 However, on examining the said decision of CIC dated 03.06.2013, it is observed that CIC has made a very liberal interpretation of Section 2(h) of the RTI Act, leading to an erroneous conclusion that Political parties are public authorities under the RTI Act. Political parties are not established or constituted by or under the Constitution or by any other law made by the parliament. The political parties are constituted by their registration under the representation of People Act, 1951 and this cannot be construed as akin to establishment or constitution of a body or institution by an appropriate Government, as held by the CIC. Further, Section 2(h) of the Act does not provide for conditions such as performance of public duty or constitution/legal provisions vesting any authority or body with rights or liabilities that make such authority or body as a public authority for the purpose of the RTI Act.

3.2 Moreover during the process of enactment of the RTI Act, it was never visualised or considered to bring the political parties within the ambit of the said Act. If the political parties are held to be public authorities under the RTI Act, it would hamper their smooth internal working. Further, it is apprehended that political rivals might file RTI applications with malicious intentions to the CPIOs of the political parties, thereby adversely affecting their political functioning.

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3.3 It is proposed to bring a bill to amend the RTI Act so as to explicitly provide in the definition of public authority that public authority shall not include any political party registered under Section 29A of the Representation of the People Act, 1951. It is also proposed to add a new section in the RTI Act to provide for validation of the provisions of the proposed Bill.

3.4 The Right to Information Act, 2005 shall be amended as below:

(A) Amendment of Section 2 by adding explanation to the definition of Public Authority in clause (h):

In Section 2 of the Right to Information Act, 2005 (hereinafter referred to as the principal Act), in clause (h), the following Explanation shall be inserted, namely:-

‘Explanation – The expression “authority or body or institution of self-government established or constituted” by any law made by Parliament shall not include any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951.’.

(B) Insertion of new section 32 to give overriding effect :

After section 31 of the principal Act, the following section shall be inserted, namely:-

“32. Notwithstanding anything contained in any judgement, decree or order of any court or commission, the provisions of this Act, as amended by the Right to Information (Amendment) Act, 2013, shall have effect and shall be deemed always to have effect, in the case of any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951 or any other law for the time being in force and the rules made or notifications issued thereunder.”.

3.5 This Act shall be deemed to have come into force on the 3rd day of June, 2013.

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4. JUSTIFICATION:

4.1 Amendment to the RTI Act will annul the adverse effects of the erroneous conclusion by the Central Information Commission vide its decision dated 03.06.2013 that political parties are public authorities under the RTI Act.

4.2 There are already provisions in the Representation of the People Act, 1951 as well as in the Income Tax Act which lead to necessary transparency regarding the financial aspects of a political party. (Relevant extract of the Representation of the People Act, 1951 is placed at Annexure – II, pg 64)

4.3 Section 29C of the Representation of the People Act, 1951 provides that:

**Declaration of donation received by the political parties.—**(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

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4.4 Moreover, section 75A of the Representation of the People Act, 1951 provides for declaration of assets and liabilities by each elected candidate for a House of Parliament. Section 77 puts an obligation on every candidate at an election to keep a separate and correct account of all expenditure incurred or authorized by him in connection with the election and also puts a limit on the said expenditure. Section 78 provides that each contesting candidate shall lodge an account of his election expenses with the district election officer. Section 125A of the said Act provides for penalty for filing false affidavit, etc.

4.5 Further, under section 13A of the Income Tax Act, 1961, a political party can claim exemption from tax, provided that

- (a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;
- (b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and
- (c) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 :

**Provided further** that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.

4.6 The Election Commission, on its own, places the information provided by the political parties under section 29C of the Representation of the People Act, 1951 in public domain through its website. The above mentioned provisions

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ensure adequate transparency in respect of financial aspects of a political party. Declaring a political party as public authority under the RTI would hamper its smooth internal working, which is not the objective of the RTI Act and was not envisaged by the Parliament under the RTI Act. Further, the political rivals may maliciously file a large number of RTI applications with the CPIOs of political parties, thereby adversely affecting the political functioning of the political parties. Thus, it is necessary to annul the adverse effects of the erroneous conclusion by the CIC that political parties are public authorities under the RTI Act.

4.7 The proposed Act shall be deemed to have come into force on the 3rd day of June, 2013, since the CIC decision holding political parties to be public authority under the RTI Act is dated 3<sup>rd</sup> of June, 2013. As per the section 19(7) of the RTI Act, the decision of the CIC shall be binding. Thus, to eliminate possibility of any action against the political parties for non compliance of the said CIC decision during the period from 3<sup>rd</sup> of June, 2013 till date, it would be imperative to bring this Act into force from 3<sup>rd</sup> of June, 2013.

**5. INTER MINISTERIAL CONSULTATION:**

5.1 The comments of Ministry of Law and justice have been obtained, which are placed at Annexure III (pg 70). The Ministry of Law and Justice has concurred the above mentioned proposal to bring a Bill for amendment in the RTI Act to exclude political parties from the definition of Public authority.

5.2 The draft Bill has been provided by the Ministry of Law and Justice. (Annexure IV, pg 78)

**6. FINANCIAL IMPLICATIONS:**

6.1 No financial implications are involved in the proposal.

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7. APPROVAL SOUGHT:

7.1 The approval of the Cabinet is solicited for amendment of the Right to Information Act, 2005 through the proposed Bill, placed at **Annexure IV (Pg 78)**, subject to changes of drafting and consequential nature, if any required.

8. STATEMENT OF IMPLEMENTATION SCHEDULE:

8.1 The statement of Implementation Schedule in respect of the above proposal has been given in Appendix-I (pg 9) to the Note.

9. STATEMENT OF EQUITY, INNOVATION AND PUBLIC ACCOUNTABILITY:

9.1 The statement of Equity, Innovation and Public Accountability is at Appendix-II (pg 10) to the Note.

10. APPROVAL OF THE MINISTER IN-CHARGE:

The Prime Minister, as Minister-in-Charge of the Ministry of Personnel, Public Grievances and Pensions has approved the submission of this Note to the Cabinet.

*Manoj Joshi*

(MANOJ JOSHI)

Joint Secretary to the Government of India  
Tele: No. 23093668.

File No. 1/13/2013 - IR  
New Delhi, the 23<sup>rd</sup> July, 2013.



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APPENDIX-I

(Refers para 8.1, page 8 of the note)

STATEMENT OF IMPLEMENTATION SCHEDULE

Subject: Proposal for an amendment to the Right to Information Act, 2005  
in the light of the decision of Central Information Commission  
dated 03.06.2013 in the case of political parties.

Gist of decision required	Project benefits/ results	Time frame and manner of implementation/ reporting to Cabinet Secretariat
Approval of the Cabinet is solicited to amend the Right to Information Act, 2005 to explicitly exclude the political parties from the definition of Public Authority for the purpose of the RTI Act.	It will annul the adverse effects of the erroneous conclusion by the Central Information Commission vide its decision dated 03.06.2013 that political parties are public authorities under the RTI Act.	After approval of the Cabinet, this Bill will be introduced in the Parliament in the coming session.

*Manoj Joshi*

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APPENDIX-II

(Refers para 9.1, page 8 of the note)

STATEMENT OF EQUITY, INNOVATION AND PUBLIC  
ACCOUNTABILITY

Subject: Proposal for an amendment to the Right to Information Act, 2005  
in the light of the decision of Central Information Commission  
dated 03.06.2013 in the case of political parties.

S.No.	The required goal	How does the proposal advance this goal?
1.	Equity or Inclusiveness	This will obviate the political parties from additional liabilities as public authorities under the RTI Act, which was not intended by the Parliament under the Act.
2.	Innovation	Not applicable.
3.	Public Accountability	Not applicable.

*Manoj Joshi*

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File No. CIC/SM/C/2011/001386  
File No. CIC/SM/C/2011/000838

**Complainants:**

1. Shri Subhash Chandra Aggarwal
2. Shri Anil Bairwal

**Respondents:**

1. Indian National Congress/ All India Congress Committee (AICC);
2. Bhartiya Janata Party(BJP);
3. Communist Party of India (Marxist) (CPM);
4. Communist Party of India(CPI);
5. Nationalist Congress Party(NCP); and
6. Bahujan Samaj Party(BSP)

**Dates of hearing: 26<sup>th</sup> September & 1<sup>st</sup> November, 2012.**

**Date of Decision: 3<sup>rd</sup> June 2013**

**Facts:**

Complainant Subhash Chandra Agrawal (Shri S.C.Agrawal) has filed Complaint No. CIC/SM/C/2011/001386 and Complainant Shri Anil Bairwal, Complaint No. CIC/SM/C/2011/000838. In both the complaints, the common issue relating to the disclosure of the accounts and funding of Political Parties has been raised. Hence, it has been decided to dispose of these matters through a common order.

**File No. CIC/SM/C/001386:**

2. By his RTI application dated 16.5.2011, complainant S.C. Aggarwal has sought the following information from the Presidents/Secretaries of the Indian National Congress (INC/AICC) and the Bhartiya Janata Party (BJP):

- “1. Copies of Election Manifestoes by BJP for Lok Sabha elections in the years it formed NDA government with Shri Atal Bihari Vajpayee as Prime Minister.
2. Were all the promises made in these election manifestoes fulfilled after BJP having formed government at the Centre.

3. If not, list of promises highlighted in BJP election manifestoes but remained unfulfilled after BJP came to power.
4. Outline of receipts (separately by cash/online/cheque etc) by BJP in last two years separately for each year for which updated account information may be there.
5. Outline of payments (separately by cash/online/cheque etc.) made by BJP in last three years separately for each year for which updated account information may be there.
6. Is it compulsory for every BJP legislature either at Centre or in States or in civic bodies etc to contribute towards party funds?
7. If yes, please provide complete and detailed information including also defaulters in making such contributions to party fund in last three years.
8. Is BJP aware of any of its legislatures (both at Centre and in States)/civic body member etc. involved in corrupt and other malpractices in last three years?
9. If yes, please provide complete details including action taken by party and others against such persons.
10. Has B.J.P. suggested any proposals to Union government /Election Commission towards electoral reforms?
11. If yes, please provide complete details including reply received from concerned ones if any.
12. Any other related information;
13. File notings on movement of this RTI petition and on all aspects mentioned in this RTI petition.”

3. Shri Moti Lal Vora, Treasurer, AICC, in his letter dated 20<sup>th</sup> May, 2011, had informed the complainant that AICC did not come under the purview of the RTI Act.

4. Shri Shanti Prasad Aggarwal, Rashtriya Prabhari of BJP, in his letter dated 28<sup>th</sup> May, 2011, had informed the complainant that BJP was not a public authority and, therefore, the Party was not obliged to provide the requisite information.

File No. CIC/SM/C/2011/000838

5. Complainant Anil Bairwal, in his RTI application dated 29.10.2010 had sought the following information from the under mentioned Political Parties:

- INC/AICC
- BJP
- NCP
- CPI(M)
- CPI
- BSP

“1. a) Sources of the 10 maximum voluntary contributions received by your party from Financial Year 2004-05 to Financial Year 2009-10?

b) The modes of these donations (Cheque, cash, DD etc.)?

c) The amounts of these donations?

d) The Financial Years in which these contributions were made?

You may provide this information in the following format:

S.No.	Source/Name of Contributor	Mode of Contribution	Amount of Contribution	Financial year in which contributions was made
1				
2				
3				
4				
5				

2. Sources/Names of all Voluntary Contributors along with their addresses who have made single contributions of more than Rs. 1 lakh to your party from Financial Year 2004-05 to Financial Year 2009-10?

You may provide this information in the following format:

S.No	Source/Name of Contributor	Address of Contributor
1		
2		
3		
4		

6. By his letter dated 15<sup>th</sup> November, 2010, Shri Moti Lal Vora, Treasurer, AICC, had informed the complainant that AICC did not come under the purview of the RTI Act.

7. Shri Chandan Bose, PRO, Nationalist Congress Party, in his letter dated 27<sup>th</sup> November, 2010, had informed the complainant as under:

“It is very important to mention here that NCP is a non-government organization. Hence, we do not have much more resources nor surplus staff to expedite unusual work, which is not in our routine job.

We generate funds from the membership drive and through other resources also, i.e. voluntary contributions from the well-wishers, and followers etc. State units of NCP have major role in membership drive from which we are getting funds in lakhs. State units of NCP at district level, block level and panchayat level organize membership camps frequently and every two years, we file the details regarding our membership and all necessary requisites in Election Commission and other government authorities.

However, I would like to inform you that ours is a National Party duly recognized by Election Commission of India and that from the day of inception of our party, we have been regularly filing our returns to the Income Tax authorities and also to the Election Commission of India along with whatever voluntary contributions received. It is pertinent to mention here that our all obligation towards authorities are up to date.

If you feel like, you may collect all the information you desired, from the above said authorities.

In case you want any clarification, please feel free to contact us.”

8. Shri K.C. Bansal of CPI, in his letter dated 6<sup>th</sup> November, 2010, had informed the complainant of the sources of ten maximum voluntary contributions received by the Party for the financial years 2004-05 to 2009-10.

9. Importantly, other Political Parties chose not to respond to the RTI application.

10. Shri Subhash Chandra Agrawal had filed a complaint dated 6<sup>th</sup> September, 2011, before this Commission in which he had mentioned that All India Congress Committee and Bhartiya Janata Party, being national parties, had got premium land in Delhi/New Delhi at zonal **variant institutional rate which was much less than** the prevailing market rate and, therefore, it was not correct on their part to plead that they did not fall under the purview of the RTI Act. It was his contention that both AICC/INC and BJP fell under the ambit of section 2(h) of the RTI Act.

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11. Likewise, Shri Anil Bairwal had filed a complaint dated the 14<sup>th</sup> March, 2011, before the Commission against the responses received from INC/AICC, NCP & CPI, contending therein that the Political Parties, being beneficiaries of the Government, fell under the ambit of Section 2(h) of the RTI Act and, therefore, they were mandated to disclose full and complete information to him.

12. As the matters in hand raised complex issues of law, the Chief Information Commissioner in his Order dated 31<sup>st</sup> July, 2012 had constituted a Full Bench comprising of the following:-

- Shri Satyananda Mishra, Chief Information Commissioner;
- Smt. Annapurna Dixit, Information Commissioner; and
- Shri M.L. Sharma, Information Commissioner

13. The Full Bench held the first hearing **on 26<sup>th</sup> September, 2012**. The following were present:

**Complainants:**

1. Shri S.C. Agrawal, along with Shri Prashant Bhushan and Pranav Sachdeva.
2. Shri Anil Bairwal, along with Shri Jagdeep S. Chhokar, Shri Trilochan Sastry, Ms. Shivani Kapoor, Shri Manoj Kumar & A.K. Aneja.

**Respondents:**

1. Shri Chandan Bose, PRO, NCP.
2. Shri D. Raja, CPI

**Election Commission:**

1. Shri K.F. Wilfred, Principal Secretary, Election Commission.

14. The Full Bench held its second hearing on 1<sup>st</sup> November, 2012. The following were present:

**Complainants:**

1. Shri S.C. Agrawal.
2. Shri Anil Bairwal, along with Shri Jagdeep S. Chhokar, Ms. Shivani Kapoor, Shri Manoj Kumar & Shri A.K. Aneja.

**Respondents:**

1. Advocate Shubhashis R. Soren for BJP.
2. Shri S. Ramachandran Pillai of CPI(M).
3. Advocates Shail Kumar Dwivedi & G.V. Rao for BSP.
4. Shri Chandan Bose, PRO, NCP and Advocate Amit Anand Tiwari for NCP.



15. Shri S.C. Agrawal has filed a written representation before the Commission in which he has vehemently pleaded for declaring Political Parties as public authorities under section 2(h) of the RTI Act. The salient points made in his representation are enumerated herein-below :-

- (i) The Political Parties hold constitutional status and wield constitutional powers under the Tenth Schedule of the Constitution in as much as they have the power to -
  - “a) disqualify legislators from Parliament and State Assemblies;
  - b) bind legislators in their speeches and voting inside the house;
  - c) decide what laws are made;
  - d) decide whether Government remains in power or which Government should come to power;
  - e) decide public policies that affect lives of millions of people.”
- (ii) As per Article 102 (2) of the Constitution, a person can be disqualified from being a member of either House of Parliament under the Tenth Schedule and that a similar provision exists for the State Legislators under Article 191(2) of the Constitution. Furthermore, as per Article 102(2), if a member of a House belonging to a Political Party votes or abstains from voting in the House contrary to the directions issued by the Political Party, he is liable to be disqualified from being a Member of the House.
- (iii) The Political Parties have been given statutory status under Section 29A of the Representation of the People Act, 1951.
- (iv) Under Section 29A (5) of the Representation of People Act, 1951, the Political Parties are required to bear true faith and allegiance to the Constitution of India as by law established.
- (v) The Political Parties give tickets to the candidates and the people vote on party symbols and, thus, the Political Parties are important instrumentalities of democratic governance.

- (vi) The Political Parties are substantially financed by the 'appropriate Government' in multiple ways and are exempt from Income Tax.

16. To canvass his case, Shri Agrawal has furnished a copy of letter dated 2.9.2011 of the CPIO of the Land and Development Office(L&DO), Ministry of Urban Development, addressed to him providing information regarding allotment of land by Land and Development Office to various Political Parties. The details of the land allotment to various Political Parties as furnished by the L&DO are extracted below :-

**“LIST OF POLITICAL PARTIES WHICH HAVE BEEN ALLOTTED LAND BY  
LAND & DEVELOPMENT OFFICE FOR THEIR OFFICE BUILDINGS**

S.No.	Name of Party	Location, Area & Date of allotment
1.	All India Congress Committee of Indian National Congress	Plot at Dr. Rajinder Prasad Road, New Delhi (also known as Jawahar Bhawan), Area = 9518.42 sq.yds. allotted on 8.9.75. Pocket-9A, Kotla Road, Area = 8092 sq. m. Allotted on 19.11.2007
2.	Rashtriya Janata Dal	Plot Nos. 34, 57, 58 & 59 at Kotla Road, New Delhi Area = 1904 sq. m. allotted on 3.7.2007.
3.	Communist Party of India (Marxist)	Plot Nos. 27, 28 & 29 at Market Road Institutional Area, New Delhi Area = 1197 sq. m. allotted on 24.11.1967 Plot Nos. 10, 11, 12 & 13 at Kotla Road Area = 2535 sq. m. allotted on 11.12.2008.
4.	Samajwadi Party	Plot No. 1, Vasant Kunj Institutional Area, New Delhi Area = 1 acre, Allotted on 21.1.2009.
5.	Communist Party of India	Plot No. 15, Kotla Marg, New Delhi Area = 0.3 acres. Allotted on 2.12.1967
6.	Bharatiya Janata Party (National Level)	Between Dr. Rajendra Prasad Road and Raisina Road, New Delhi. Area = 1.87 acres. Allotted on 8.3.2001.
7.	Janata Dal(United)	Plot No.4, Vasant Vihar Institutional Area, New Delhi Area = 2000 sq. m. allotted on 27.4.2010
8.	Bharatiya Janata Party (Delhi State)	Alternative allotment at Plot No.4 & 5, Kotla Road, New Delhi Area = 1060.80 sq. m. allotted on 12.5.2010
9.	All India Anna Dravida Munnetra Kazhakhham	Plot No. 13 & 25, Pushp Vihar, M.B. Road, Saket, New Delhi, Area = 1008 Sq. m. Allotted on 30.7.2010
10.	Delhi Pradesh Congress	Plot No. 2, Rouse Avenue Institutional Area

	Committee	Area = 1127 sq. yds. Allotted on 15.5.1987
11.	All India Trinamool Congress	Plot Nos. 2 and 3, at DDU Marg, New Delhi Area = 1000 sq. m. allotted on 01.03.2011.

17. In addition to the above, Shri Agrawal has also furnished information regarding the allotment of accommodation to various Political Parties on rental basis and the outstanding dues against them, as received by him from the Directorate of Estates vide their letter dated 24.8.2011. The relevant information is extracted below:

S.No.	Name of the Party	Accommodation	Monthly rent charged
1.	Indian National Congress Committee (I)	26, Akbar Road	3015 +Furniture charges
2.	Indian National Congress	24, Akbar Road	42817 +Furniture charges
3.	Indian National Congress	5, Raisina Road	34189 +Furniture charges
4.	Indian National Congress	CII/109, Chanakyapuri	8078
5.	Bhartiya Janata Party	11, Ashoka Road	66896 + Furniture charges
6.	Bharatiya Janata Party	14, Pandit Pant Marg	15077 + Furniture charges
7.	C.P.I.	AB-4, Purana Quila Road	1550
8.	Nationalist Congress Party	10, Dr. B.D. Marg	1320
9.	President Bahun Samaj Party	4, G.R.G. Road	1320
10.	Samajwadi Party	18, Copernicus Road	12138
11.	Shri Prakash Karat, General Secretary, CPI(M)	8, Teen Murti Lane	1550

18. Shri Anil Bairwal has also filed a detailed representation before this Commission to contend that Political Parties fall in the ambit of section 2(h) of the RTI Act. In his representation, Shri Bairwal has made the following salient points :-

- (i) All the Political Parties have been claiming tax exemption under section 13A of the Income Tax Act. As per his representation, various Political Parties claimed Income Tax exemption as given in the following Table:

Party	Tax Payable exempted in FY 2006-07(Rs crores)	Tax payable exempted in FY 2007-08 (Rs crores)	Tax payable exempted in FY 2008-09 (Rs crores)	Tax payable exempted in 3 years (Rs crores)
BJP	26.86	40.68	73.71	141.25
INC	57.00	75.05	168.87	300.92
BSP	15.44	23.60	0.80	39.84
CPI(M)	6.98	4.62	6.53	18.13
CPI	0.01	0.21	0.02	0.24
NCP	0.90	0.68	8.06	9.64

( Source : Compilation from copies of Income Tax Returns received from Income Tax Department under RTI Act)

(ii) State has been indirectly financing various Political Parties by way of free air time on All India Radio. As per his calculation, the amount spent by the State on the Political Parties under this Head is as follows:

S.No.	Name of the party	Time allotted for broadcast at the AIR during LS'09(Min) for Political Parties	Rate charged by AIR in time category-3 for every 10 seconds	Amount spent by the State for AIR (Rs lakhs)
1.	BJP	140	800	6.72
2.	BSP	70	800	3.36
3.	CPI	50	800	2.40
4.	CPI(M)	70	800	3.36
5.	INC	160	800	7.68
6.	NCP	50	800	2.40
7.	RJD	55	800	2.64
	Total	595	800	28.56

(Source : Compilation from Spot Buy Rates and Time Allocated to various Political Parties received from All India Radio and Election Commission of India under various RTI applications).

(iii). The complainant has also argued that the State has spent huge amounts on the Political Parties in the matter of free air time on Doordarshan. The table given by him is reproduced below:-

S. No.	Name of the Party	Time allotted for telecast at the national network of DD during Lok Sabha'09 (Min)	Rate charged by national network of DD at non prime time every 10 seconds	Amount spent by state for the national network during LS'09 (Rs.crores)	Time allotted for telecast at the regional network during LS'09 (Min.)	Rate Charged By regional network at non prime time every 10 seconds	Amount spent by State for the regional network during LS'09 (Rs.crores)	Total Amount spent by the state on political parties for both the national and regional network during LS'09(Rs.crores)
1	BJP	140	15,000	1.26	215	10,000	1.25	2.51
2	INC	160	15,000	1.44	240	10,000	1.44	2.88
3	BSP	70	15,000	0.63	100	10,000	0.60	1.23
4	CPI	50	15,000	0.45	75	10,000	0.45	0.90
5	CPI(M)	70	15,000	0.63	105	10,000	0.63	1.26
6	NCP	50	15,000	0.45	80	10,000	0.48	0.93
7	RJD	55	15,000	0.49	85	10,000	0.51	1.00
	<b>Total</b>	<b>595</b>		<b>5.35</b>	<b>900</b>		<b>5.40</b>	<b>10.75</b>

( Source : Compilation from Spot Buy Rates and Time Allocated to various Political Parties received from Doordarshan and Election Commission of India under the RTI Act).

(iv) The valuation of the properties allotted by the Government, as estimated by the complainant Shri Bairwal, as given in his representation, is as follows :-

Party	Office and address (with allotment dates)	Area	Area in Sq.Fts. (1 sq.m.=10.76 Sq. fts, 1 sq. yd.= 9 sq.fts., 1 Acre= 4840 sq.yds.)	Current Market Value of the Allottee Plots Land(based on Real Estate Consulting Reports @ Rs. 60,000 per sq. ft(Rs.in Crores)	Current Market Value of these allotted plots (Party-wise) (Rs. In crores)
		(A)	(B)	(C=B*60,000)	
INC	1. Plot at Dr. Rajinder Prasad Road, New Delhi(Allotted on 08.09.1975)	9518.42 sq. yds.	85665.78	513.99	1036.41
	2. Pocket 9A, Kotla Road, New Delhi(allotted on 19.11.2007)	8092 sq. m.	87069.92	522.42	
BJP	1. Between Dr. Rajendra Prasad Road and Raisinha	1.87 acres	81457.20	488.74	557.23

	Road(allotted on 08.03.2001)				
	2. Plot No.4 & 5 Kotla Road New Delhi (allotted on 12.05.2010)	1060.80 sq.m	11414.21	68.49	
CPI(M)	Plots No.27, 28 & 29 at Market Road Institutional Area, New Delhi(allotted on 11.04.1967)	1197 sq.m	12879.72	77.28	240.94
	Plot No.10, 11, 12 & 13 Kotla Road, New Delhi (allotted on 11.12.2008)	2535 sq.m	27276.60	163.66	
CPI	Plot No. 15 Kotla Marg, New Delhi(allotted on 2.12.1967)	.3 acres	13068.00	78.41	78.41
RJD	Plots No. 34,57,58 & 59 at Kotla Road, New Delhi(allotted on 03.07.2007)	1904 sq.m	20487.04	122.92	122.92
SP	Plot No.1, Vasant Kunj Institutional Area, New Delhi (Allotted on 21.01.2009)	1 Acre	43560.00	261.36	261.36
JD	Plot No.4, Vasant Vihar Institutional Area, New Delhi(allotted on 24.10.2010)	2000 sq.m	21520.00	129.12	129.12
AIADMK	Plot Nos.2 and 3 at DDU Marg, New Delhi(Allotted on 01.03.2011)	1008 sq.m	846.08	65.08	65.08
AITC	Plot Nos.2 and 3 at DDU Marg, New Delhi (Allotted on 01.03.2011)	1000 sq. m.	10760.00	64.56	64.56
Total of current Market Values of the plots of land allotted to the Political Parties(Rs. In Crores)				2556.02	2556.02

(v) Under Rules 11 and 12 of the Registration of Electors Rules, 1960, two copies of the Electoral Rolls are supplied to the recognized Political Parties, free of cost. This is another instance of indirect financing of the Political Parties by the State.

(vi) The Central Govt. and the State Governments have allotted various houses/buildings/other types of accommodation to various Political Parties either free of cost or at concessional rates. This also amounts to indirect financing of Political Parties by the respective Governments.

(vii) The Political Parties are continuously engaged in the performance of public duty and it is, therefore, important that they become accountable to the public. Transparency in the working and financial operations of the Political Parties is essential in the larger public interest.

19. Senior Advocate, Shri Prashant Bhushan addressed the Commission on 26<sup>th</sup> September, 2012 on behalf of complainant Shri S.C. Agrawal. He vehemently contended that the entire political system in India revolved around the Political Parties. They perform a public function and, therefore, warrant to be declared 'public authority' under section 2(h) of the RTI Act. In amplification of his above broad submission, he has advanced the following arguments:-

(i) Tenth Schedule to the Constitution vests tremendous powers with the Political Parties in as much as they can oust an elected member – whether MP or MLA - from out of the Party if he steps out of the party line. The vast power of the Political Parties has been recognised in this Schedule and, therefore, if purposive interpretation of the Tenth Schedule is made, then the Political Parties can be deemed to be covered under Section 2(h) of the RTI Act.

(ii) As per Section 29C of the Representation of People Act, 1951, all donations of and above Rs. 20,000/- made to Political Parties are required to be reported to the Income Tax Department. This obligation cast on the Political Parties points towards their public character.

(iii) By virtue of powers conferred on it under Article 324 of the Constitution read with section 29A of the Representation of People Act, 1951, and Rules 5 and 10 of the Conduct of Election Rules, 1961, and other powers vested in it, the Election Commission of India made and promulgated the Election Symbols (Reservation and Allotment) Order, 1968. Under this Order, Election Commission allots symbols to various Political Parties. The Election Commission is an instrumentality of the State. Allotment of election symbols by the Election Commission to various Political Parties is suggestive of the public character of the Political Parties.

(iv) The Political Parties get huge tax exemptions under section 13 A of the Income Tax Act, 1961, which amounts to indirect financing of the Political Parties in terms of Section 2(h)(d)(i) of the RTI Act.

(v) The Central Government and the State Governments have allotted huge plots of land/buildings/other accommodation in prime locations to all Political Parties all over the country either, free of cost, or on hugely concessional rates. This also amounts to indirect financing of the Political Parties.

(vi) Doordarshan of India allots free air time to the Political Parties during the elections. This is another instance of indirect financing of the Political Parties.

(vii) As the Political Parties are the life blood of the entire constitutional scheme in a democratic polity and as they are indirectly financed by the Central Government and the State Governments in various ways, as discussed hereinabove, the Political Parties need to be declared public authority under section 2(h) of the RTI Act.

20. Shri A.K. Aneja, appearing on behalf of the complainants, in his brief submission has drawn the Commission's attention to section 80 GGB of the Income Tax Act which provides that contribution made by an individual or Company to a Political Party is deductible from the total income of the assessee. This provision is exclusively applicable to the Political Parties and is suggestive of indirect financing of the Political Parties by the State.

21. Complainant Shri Anil Bairwal has also filed detailed extra submissions before the Commission arguing that the Political Parties need to be declared Public Authority under section 2(h) of the RTI Act. His first and foremost submission is that Political Parties have a 'binding nexus with the populace'. He goes on to say that "As the Central Institution of democracy, they embody the will of the people and carry all their expectations that democracy will be truly responsive to their needs and help solve the most pressing problems that confront them in the daily lives".

22. His second submission is that there is need for accountability and transparency in the functioning of the Political Parties. It is his contention that transparency in the functioning of



Political Parties was recommended by the Law Commission of India in their 170<sup>th</sup> Report on "Reform of Electoral Laws (1999)". The relevant para of the Law Commission's report as extracted by him is given below :-

*"On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the Political Parties which are integral to parliamentary democracy. It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside".(emphasis added by the complainant)*

23. Shri Bairwal has also relied on this Commissions decision dated 29.04.2008 in File No. CIC/AT/A/2007/01029 & 01263-01270 wherein transparency in the functioning of Political Parties has been underlined. He particularly draws our attention to para 28 of the decision extracted below :-

**"28. Political Parties are a unique institution of the modern constitutional State. These are essentially civil society institutions and are, therefore, non governmental. Their uniqueness lies in the fact that in spite of being non governmental, Political Parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and Political Parties that has assumed critical significance in the context of the Right of Information – an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the Political Parties which control the most important of those organs. For example, it will be a fallacy to hold that transparency is good for the bureaucracy but not good enough for the Political Parties which control those bureaucracies through political executives".**

24. The Commission has further observed :

“38. The laws of the land do not make it mandatory for Political Parties to disclose the sources of their funding, and even less so the manner of expending those funds. In the absence of such laws, the only way a citizen can gain access to the details of funding of Political Parties is through their Income Tax Returns filed annually with Income Tax authorities. This is about the closest the Political Parties get to accounting for the sources and the extent of their funding and their expenditure. There is unmistakable public interest in knowing these funding details which would enable the citizen to make an informed choice about the Political Parties to vote for. The RTI Act emphasizes that “democracy requires an informed citizenry”, and that transparency of information is vital to flawless functioning of constitutional democracy. It is nobody’s case that while all organs of the State must exhibit maximum transparency, no such obligation attaches to Political Parties. *Given that Political Parties influence the exercise of political power, transparency in their organization, functions and, more particularly, their means of funding is a democratic imperative, and, therefore, is in public interest*”.

25. Another strand of his submissions is that the Public Authority, as defined under section 2(h) of the RTI Act, is a broader term than the ‘State’ as defined under Article 12 of the Constitution. In other words, it is possible that an entity may fall short of being ‘State’ and yet may be a ‘Public Authority’ under the RTI Act. In fact, ‘Public Authority’ and the ‘State’ are different and distinct from each other. Shri Bairwal has relied on para 25 of the judgment of Punjab and Haryana High Court in WP(C) No. 19224/2006 along with 23 other cases as extracted below :-

“25. Above-all, the deep and pervasive control as required under Article 12, is not required and essential ingredient for invoking the provisions of RTI Act. The primary purpose of instrumentality of the State is in relation to enforcement of the fundamental rights through Courts, *whereas the RTI Act is intended to achieve, access to information and to provide an effective framework for effecting the right to information recognized under Article 19 of the Constitution*. The complainants are not claiming any kind of monetary benefits or property from the empire of the

petitioner-institutions. To my mind, the enforcement of fundamental rights through Courts and the question of applicability of writ jurisdiction on an instrumentality of the State for the purpose of determination of substantive rights and liabilities of the parties are *altogether (entirely) different than that of the field of RTI Act, only meant to impart the information*. Hence, in my view, the ambit and scope of phrase of instrumentality of the State under Article 12 of the Constitution is entirely different and distinct than that of the regime of RTI Act. *If the intention of the Legislature was to so restrict the meaning to the expression of public authority, straightjacketing the same within the four corners of the State, as defined under Article 12, then there was no need/occasion to assign a specific broader definition of public authority under section 2(h) of RTI Act in this relevant connection”*.

26. The complainant has also argued that while determining whether a particular entity is a Public Authority or not, narrow interpretation of the words used in the statute would frustrate the object of the Act. The purpose of this Act is transparency and accountability in the functioning of entities which impact citizens' daily lives. The Political Parties are such entities. He has relied on para 41 of the Delhi High Court judgment delivered by Justice Ravindra Bhat in Indian Olympic Association –Vs- Veerish Malik and others(WP)(C) No. 876/2007 as extracted below :-

*“The Act marks a legislative milestone in the post independence era to further democracy. It empowers citizens and information applicants to demand and be supplied with information about public records. Parliamentary endeavor is to extend it also to public authorities which impact citizens daily lives. The Act mandates disclosure of all manner of information and abolishes the concept of locus standi of the information applicant; no justification for applying (for information) is necessary; decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency. At the same time, the need of society at large, and Governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds have also been accommodated under the Act.”*

27. Yet another submission of the complainant is that the Political Parties are being indirectly financed by the State in various ways viz. allotment of land, free of cost, or at nominal rates and exemptions from the Income Tax etc. Paras 3.1 to 3.7 of his representation are extracted below :-

**“3.1 All Political Parties claim to work for the people and in the national interest. Income tax returns of Political Parties obtained by ADR using the RTI Act reveal that on an average only about 20 per cent of the income of Political Parties comes from donations that they disclose to the Election Commission under section 29C of the Representation of People Act. The sources of the remaining 80 per cent of the income are shrouded in mystery. This is what gives rise to all kinds of speculation about the pernicious influence of illegal money.**

**3.2 After various RTI applications filed to the central agencies, it was discovered that Political Parties enjoy a number of “facilities” provided to them by the government. This is a clear instance of being “financed indirectly by funds provided by the appropriate government” which puts Political Parties squarely under the definition of ‘public authority’ as provided for in section 2(h)(d)(ii) of the RTI Act.**

**3.3 In addition to the 100% exemption on income under section 13A of the Income Tax Act, all the major Political Parties have been provided “facilities” for residential and official use by Directorate of Estates (DOE), Government of India, in New Delhi. They have been given offices and residential accommodations at prime locations in New Delhi(Lutyen’s Delhi) such as Akbar Road, Raisina Road, Chanakyapuri. The rentals charged are a fraction of the market rent. These facilities are not just provided to them at nominal rates but their maintenance, upgradation, modernization, renovation, etc. are also done at State expense. Similar “facilities” are also provided at various State capitals, details of which are extremely difficult to obtain.**

- 3.4 Money is also spent by Election Commission of India on Political Parties for providing “facilities” to Political Parties such as free electoral rolls, Doordarshan and All India Radio also provide free broadcast facilities to the Political Parties at election time which results in loss of revenue in terms of *air time which has a market value.*
- 3.5 If closely monitored and totalled, the total of public funds spent on Political Parties would possibly amount to hundreds of crores.
- 3.6 There have been several Judicial pronouncements and also decisions by the Central Information Commission that have held that allotment of real estate, rental on subsidized rate, exemption from tax of various types including income tax amount to “indirect financing” in terms of section 2(h)(d)(ii) of the RTI Act. A few of the more useful citations are given below.

3.6.1 Land : The case that is relevant here is Civil Writ Petition No. 16750 of 2010, The Sutlej Club vs. State Information Commission and another decided on 09.05.2011, commonly referred to as CWP No. 19224 of 2006 alongwith 23 connected cases. The Punjab and Haryana High Court held as follows :

“72. Now adverting to the financial help of petitioner-Sutlej Club, Ludhiana(at Sr. No.15) is concerned, the SIC mentioned that as per revenue record, the land owned by the Provincial Government is given to the Club which amounts to substantial financial assistance by the State Government. The fact that the valuable land upon which the Club was constructed, belongs to the Government and no rent/lease is paid by it to the Government shows that there is a substantial financial assistance by the State to the Club. The cost of prime land provided to the club would be much more than its normal revenue expenditure. Apart from land provided for construction of the club building, the Government has also incurred a part of expenditure on its construction.... In my view, the SIC has recorded the correct finding

of fact based on the material on record, by virtue of impugned order dated 8.7.2010.

3.6.2 Land and Income Tax concessions : A directly relevant case here, dealing with both, land and income tax, was decided by the Central Information Commission on 11.01.2012. It was Mr. Tilak Raj Tanwar vs Government of NCT of Delhi, File No. : CIC/AD/A/2011/001699. After considering all aspects of the issue, the Commission decided as follows :

“12. The Commission while relying upon the various decisions given hereinabove is convinced that the Mount St. Mary’s School *may be considered as being “substantially financed” by the appropriate Governmen, in view of the 5 acres of prime land granted to it at subsidized rates and income tax concessions being enjoyed by the school and that, therefore, it can be declared as a Public authority*”.

3.6.3 Exemption from Tax : The case that is relevant here is Civil Writ Petition No. 16086 of 2008, Punjab Cricket Association, SAS Nagar(Mohali) vs State Information Commission, Punjab and another, decided on 09.05.2011, commonly referred to as CWP No. 19224 of 2006 alongwith 23 connected cases. The Punjab and Haryana High Court held as follows :

“68. Now advertng to the case of petitioner –PCA (at Sr. No.12), it is *admitted position that it is enjoying tax exemption from entertainment tax which is an direct financial aid by the State to it. Although the SIC has negatived the plea of the complainant-information seeker, but to my mind, the SIC has slipped into deep legal error in this regard because the PCA is saving heavy amount from exemption of entertainment tax which naturally is an incidence of financial aid by the Government.*

3.6.4 Tax exemption and nominal rent : Another case relevant here is Board of Control for Cricket India and another vs Netaji Cricket Club and others [2005 AIR (SC) 5921]. The Supreme Court observed as follows :

“80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It, *inter alia*, enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent.

3.7 While it may well be argued that the above quoted decisions refer to institutions such as schools, clubs which, in some characteristics, are different from Political Parties but *these decisions do recognize, accept and establish the principle that exemption from tax and allotment or permission to use land and other real estate is an accepted form of “financing”, though it may be considered “indirect” as it is not in the physical form of money.* And this principle is one of the factors that makes Political Parties come under the definition of “public authority” as given in section 2(h) of the RTI Act.”

28. More importantly, the complainant has contended that Political Parties have constitutional and statutory status. It is his contention that incorporation of Articles 102(2) and 191(2) through the 42<sup>nd</sup> Amendment and the 10<sup>th</sup> Schedule to the Constitution has given constitutional status to the Political Parties. According to him, it is a fallacy to say that any individual can form a political party. A body or entity does not become a political party in the legal sense until it is registered by the Election Commission of India under section 29A of the Representation of the People Act, 1951, and this registration **lends it the colour** of Public Authority.

29. Lastly, the complainant has also contended that in exercise of its powers, the Election Commission of India under Elections Symbols (Reservation and Allotment) Order, 1968, promulgated under article 324 of the Constitution and Rules 5 & 10 of the Conduct of Election Rules, 1961, grants symbols to various Political Parties for election purposes for the recognition of Political Parties and can suspend or withdraw recognition of recognized Political Parties on

their failure to observe model code of conduct or not following the lawful directions and instructions of the Commission. It is indicative of the public character of the Political Parties.

30. It may be further mentioned that Shri S. Sudhakar Reddy, General Secretary, Communist Party of India, sent a letter dated 24.9.2012 to the Commission stating therein that the Political Parties do not come under the ambit of section 2(h) of the RTI Act. The relevant paragraphs of his letter are extracted below:-

“Com. A.B. Bardhan, the then General Secretary has written a letter expressing willingness to keep the accounts of our Party transparent. In our view, Political Parties do not come under Section 2(h)(d)(ii) of the RTI Act. Notwithstanding this, we have always been prepared to be transparent in our accounts.

We submit our accounts to Election Commission of India every year and every year we submit our accounts to the Income Tax Department also. The accounts of our Party are audited by internal audit committee and also by the Chartered Accountant. It is then submitted to our Party National Council for obtaining their approval. We are prepared to make all the income and expenditure of our Party transparent.”

31. On the other hand, Shri A.B. Bardhan, General Secretary, CPI, in letter dated 21.3.2011 addressed to Shri Anil Bairwal has stated that CPI is a Public Authority under section 2(h) of the RTI Act. The relevant portion of his letter is extracted below :-

“(a) Yes, we are Public Authority under section 2(h)(d)(ii) “nongovernment organizations” substantially financed, directly or indirectly, by funds provided by the appropriate Government.

(b) We have our internal Appellate Authority “Central Control Commission”.

32. It would, thus, appear that CPI has a contradictory stand in the matter, even while vouching for transparency in their accounts.



33. Shri Ambeth Rajan has filed a counter affidavit dated 31.10.2012 on behalf of Bahujan Samaj Party (BSP) in which he has taken the plea that the Political Parties are not public authorities under section 2(h) of the RTI Act. Taking his argument further, he would submit that BSP is a political party that has not been notified as public authority by means of any Notification of the appropriate government to the effect that BSP is under control of or substantially financed by the appropriate government. He has also contended that State funding on the electoral rolls during elections is done merely to meet statutory obligations under the Registration of Electoral Rules, 1960. Similarly, tax exemption under section 13A of the IT Act is subject to the compliance of the provisions of Income Tax Act. Further more, allotment of government/public land to the Political Parties on concessional rates does not cloth the party into a public authority within the meaning of section 2(h) of the RTI Act. Paras 04, 08 & 10 of his representation are extracted below:-

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**“4. That at the outset, I submit that the complainant has had no legal right to file application under Section 6(1) of the Right to Information Act, 2005, against the answering respondent for the reason that the Political Parties are not the public authorities under Section 2(h) of the Right to Information Act, 2005. The Bahujan Samaj Party being one of the six national Political Parties duly recognized by the Election Commission of India is, therefore, not a ‘Public Authority’ within the meaning of Section 2(h) of Right to Information Act, 2005. Therefore, the present complaint petition is liable to be dismissed.**

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**- That I hereby submit that the BSP is a political party. It has not been notified as a public authority by means of any notification of appropriate government to the effect that BSP is owned, controlled or substantially financed by the appropriate government. Merely because some concessions, rebate and subsidy has been granted like it has been granted to any other political party, the BSP does not automatically become a body owned, controlled or substantially financed by the appropriate government.**

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10. That in view of the above, the present complaint petition against the answering respondent is legally not maintainable only on the ground that there is a State funding on free air time during elections on Doordarshan and All India Radio. The State funding on the electoral roll during elections is done to meet statutory obligations under Registration of Electoral Rules, 1960, which mandates that two copies of the electoral roll, one printed copy and another in CD is supplied to recognized Political Parties, free of cost. Further Tax exemption u/s 13A of the Income Tax Act is again subject to the compliance of the provisions of the Income Tax Act. The allotment of Government/public offices of Political Parties on concessional rent does not clothe the political party into a public authority within the meaning of Section 2(h) of Right to Information Act, 2005.”

34. Shri Amit Anand Tiwari, counsel for Nationalist Congress Party(NCP), has argued at length to canvass that NCP is not a public authority. He has also filed a detailed representation in this regard. It is his contention that the NCP does not fall within the ambit of section 2(h) of the RTI Act. He has refuted the arguments advanced by the complainants that the Political Parties are substantially financed by the Government. His contention is that free airtime granted to NCP during the election time on national television and national radio is not suggestive of government financing in as much as during elections, it is a popular practice in most of the democracies. He has referred to the case of Canada in this context. Further, according to him, supply of free electoral rolls during elections to NCP, again, is not indicative of financing by the Government. It is his contention that under rule 11(C) of the Registration of Electoral Rolls, 1960, the Registration Officer is mandated to provide two copies of Electoral Rolls, free of cost, to Political Parties registered under section 29A of the Representation of People Act. This is a statutory requirement and cannot be construed as substantially financing. Similarly, allotment of party office to NCP at economical rates cannot be construed as substantial financing in as-much-as the Government makes this facility available not only to Political Parties recognized by the Election Commission but also to other segments of population such as journalists etc. Further more, it is Shri Tiwari's contention that exemption from Income Tax granted under section 13A of the Income Tax Act also does not mean that the NCP is substantially financed by the Government. He has given the example of Income Tax exemption to the farmers but by virtue of this, the farmers cannot be designated as public authority under section 2(h) of the RTI Act.

35. Without prejudice to the above arguments, Adv. Tiwari has argued that even if it is admitted that the Government is funding the Political Parties in the manner mentioned herein above, it cannot be said to be 'substantial financing'. It is his contention that the NCP receives less than 1.55% of its total funding from the Government and, therefore, cannot be construed as public authority. Paragraphs 13.1 and 13.2 of his representation are extracted below:-

**"13.1 In *Mohd. Safdar Iman v Indian Institute of Welfare* (dated 5.1.2008), this Hon'ble Commission held that the respondent institute was not a public authority mainly because it received not more than 20% of grant-in-aid from the government, which cannot be deemed to be substantial financing. In *Sh. Shanmuga Patro v Rajiv Gandhi Foundation* (Decision No. 6010/IC(A)/2010), THIS Hon'ble Commission has considered *DAV College case* and its own decision in *Mohd. Safdar Imam*" and held that since the respondent body received a very nominal amount of grants from the Government amounting to barely 4%, it cannot be said to be a public authority on account of being substantially financed by the Government. In *DAV College & Trust and Management Society v. Director of Public Institutions & Ors.* (AIR 2008 P&H 117), the Punjab & Haryana High Court held that where the appellant society was receiving 45% of grant-in-aid from Government, it was being substantially financed by the Government, thus a 'public authority' under section 2(h) of the RTI Act.**

**13.2 From the above stated judicial precedents and definitions, it becomes clear that every financing would not bring a person within the purview of section 2(h). Such financing must be apparently considerable and done through subscribing of shares or advancing of loans etc. In cases where financing has been less than 20% of the total finance of the authority or body or organization, same was held not to be substantial financing within the meaning of Section 2(h)."**

36. Adv. Tiwari has filed additional submissions dated 1.11.2012 for NCP in which he has made the following salient points :-

(i) The power exercised by the Political Parties under the 10<sup>th</sup> Schedule of the Constitution cannot be construed to mean that the Political Parties are public authorities under

section 2(h) in as much as these powers can be exercised only when an elected Member has voted or abstained from voting against the whip of the political party or he has voluntarily given up the membership of such political party. Even in such cases, the political party cannot disqualify a Member of Legislature. All that it can do is to move an application seeking disqualification of such elected Member before the Chairman/Speaker of the House who has exclusive authority to declare such elected Member to be disqualified or otherwise.

(ii) No doubt, Political Parties have played a significant role in public life but public interest is not the criterion for declaring a body or institution as public authority under section 2(h) of the RTI Act.

(iii) If Political Parties are declared to be public authorities,, then they will be flooded with applications by pseudo information seekers to maliciously engage the party workers only in responding to the RTI applications thereby causing detriment to their political functioning. The law laid down by the High Court in the Indian Olympic Association case, Commonwealth Games Committee case and Sanskriti School case is not applicable to the Political Parties in as much as there was evidence of huge direct financing by the Government to these bodies/entities which is not true in case of Political Parties.

(iv) Public interest argument is not valid in case of Political Parties under section 11 of the RTI Act. If this argument is accepted, then the identities of the contributors would have to be disclosed and the contributors may not like this to happen. Such disclosure may expose them to harassment and threats by other Political Parties.

(v) In decision dated 8.7.2009 of a Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 & CIC/MISC/2009/0002, it was held that Political Parties are not covered under section 2(h) of the RTI Act.

(vi) In the decision dated 5.2.2010 of Goa State Information Commission (Shri Pandu Ram -Vs- the President, Maharashtra Gomantak Party), it was held that MGP was not established or constituted under any enactment of State Legislature or by any Notification or order by the Government. Nor was it owned or substantially financed by the State Government and, therefore, was not a public authority.

37. Shri Shanti Prasad Aggarwal of the BJP, in his letter dated 28.5.2011, addressed to the complainant S.C. Agrawal has taken the stand that the BJP is not a public authority under the RTI Act.

38. Similarly, Shri Moti Lal Vora, Treasurer, AICC, in letter dated 20.5.2011 addressed to complainant S.C. Agrawal has taken the stand that the INC/AICC does not come under the purview of public office and, hence, is not liable to provide information under the RTI Act.

39. After hearing the arguments, the Commission decided to address a letter dated 8.11.2012 to the following Political Parties:-

- o Nationalist Congress Party
- o Bahujan Samaj Party
- o Bhartiya Janata Party
- o Communist Party of India
- o Communist Party of India(Marxist)
- o INC/ All India Congress Committee

seeking from them the following information :-

“(A) Details of lands/buildings allotted by Govt. and its instrumentalities to your Party:

- (a) in Delhi
- (b) in State Capital(s)
- (c) at Distt; HQrs;

In the following format, category wise :-

- (i) Year of allotment
- (ii) Postal address of plots/buildings.
- (iii) Size of plots/buildings.
- (iv) Whether any consideration paid to Central or State Govt. If yes, amount thereof.
- (v) Whether the lands/buildings were allotted at market rate or at concessional rate.

- (vi) The estimated value of plots/buildings at present(property-wise).
- (B) Amount of contributions received by your Party during the last five financial years i.e. 2007-08 to 2011-12, year-wise.
- (C) Incomes received by your Party from any other sources during the last five financial years i.e. 2007-08 to 2011-12.”

40. Only two parties viz. NCP and CPI(M) chose to respond to the Commission’s notice. The other Political Parties simply ignored it.

41. Shri S.R. Kohli, Parliamentary Secretary, NCP, in letter dated 22.11.2012 informed the Commission that his party was not covered under section 2(h) of the RTI Act and, therefore, it was not bound to supply any information.

42. However, Shri Prakash Karat, General Secretary, CPI(M) wrote a detailed letter dated 21.11.2012 to the Commission in which he gave details of the two buildings allotted to CPI(M) viz : A.K. Gopalan Bhawan – Plot Nos. 27, 28 & 29 at Market Road, measuring 1197.33 Sq Mts. allotted on 22.11.1983 and Kotla Road Plot Nos. 10, 11, 12 & 13, measuring 2534.46 sq. mts., allotted on 11.12.2008. As regards A.K. Gopalan Bhawan plot, he informed the Commission that the Party had deposited security amount of Rs. 31.42 lacs with licence fee of Rs. 78,574/-. As regards Kotla Road plot, the Party had paid premium of Rs.53.80 lacs with ground rent of Rs. 1,34,512/- per annum. Shri Karat has also clarified that the Party has only lease-hold rights on the plots under reference. Shri Karat has also given details of the income of the party from 2007-08 to 2011-12. But as regards the question of the quantum of tax exemption availed by the Party, he took the following stand

“Parliament took the decision to exempt the income of the Political Parties from Income Tax liabilities with the aim to strengthen the democratic polity in the country as Political Parties and their activities are its important components.”

He also added that it is not a fact that all persons making contributions enjoy full tax exemption on the amounts contributed to Political Parties.

43. It needs to be underlined that it has been the tenor of the arguments advanced by the complainants herein that the Political Parties are substantially financed, albeit indirectly, by the appropriate Government(Central Government in this case) by way of :-

- Allotment of large tracts of land in prime areas of Delhi either free of cost or at concessional rates;
- Allotment of houses on rental basis on concessional rates.
- Exemption from Income Tax u/s 13-A of the I.T. Act
- Free air time on All India Radio;
- Free air time on Door Darshan, and
- Provisioning of free electoral rolls etc.

44. The Commission had written to the Secretary, Ministry of Urban Development, Government of India, New Delhi, to confirm the position regarding the allotment of plots to various Political Parties, as claimed by the complainants. The Deputy Land & Development Officer, in his letter dated 21.5.2013, has written to the Secretary of the Commission regarding the allotment of land to various Political Parties. The operative portion of his letter is reproduced below:-

“I am directed to refer to your letter No. Secy/CIC/2013/Misc./02 dated 7<sup>th</sup> March, 2013 and 16<sup>th</sup> April, 2013 on the above mentioned subject and to provide information available in this office in respect of Table-1 as under :-

S.No.	Name of party	Location	Area
1.	All India Committee of Indian National Congress	Dr. Rajender Prasad Road (also known as Jawahar Bhawan Trust), Kotla Road, Pkt.9A.	4736.1 sq. yds. 4583.32 sq.yds. 8093 sq. mts.
2.	Rashtriya Janata Dal	Kotla Road Plot Nos. 34, 57, 58 & 59	1904 sq.mts.
3.	Communist Party of India(Marxist)	Market Road, Plot Nos. 27, 28 & 29	1197.33 sq. mts.
4.	Samajwadi Party	Vasant Kunj, Plot No.1	1 acre
5.	Communist Party of India	Kotla Road, Plot No.15	0.3 acre
6.	Bhartiya Janata Party	Between Dr. Rajinder	1.87 acre

	(National Level)	Prasad Road-Raisina Road	
7.	Janata Dal(United)	Vasant Vihar, Plot No.4	2000 sq. mts.
8.	Bhartiya Janata Party (Delhi State)	Kotla Road, Plot No.4 & 5, alternative	1060.80 sq. mts.
9.	All India Anna Dravida Munnetra Kazhakhham	Pushp Vihar, M.B. Road, Saket Plot No. 15 & 22	1008 sq.mts.
10.	Delhi Pradesh Congress Committee	Rouse Avenue, Plot No.2	1127.78 sq.mts.
11.	All India Trinamool Congress	DDU Marg, Plot No.2 & 3	1000 sq. mts.

It is informed that the information provided in the Table-I is factually correct and the allotments were made to these Political Parties on **institutional land rates of this office**. Copies of allotment letters in respect of above mentioned Political Parties are enclosed herewith.”

45. The terms and conditions of allotment to AICC/INC are contained in the DL&DO's letter dated 19.7.2007. Para 2(i) of the said letter is reproduced below :-

“(i) The allottee will pay the premium of land @ **Rs. 88 Lakh per acre provisionally** plus 2.5% thereof as **annual ground rent**. This rate was valid up to 31.3.2000. The allottee shall have to pay difference of premium in case the land rates are revised retrospectively by the Government. w.e.f. 1.4.2000. The allottee shall submit an undertaking to this effect on a non-judicial stamp paper worth Rs. 10/-.”

46. The land has been allotted to other Political Parties also more or less on the same terms and conditions. However the earlier allotments made to various Political parties were at lower rates.

47. The Commission has received another letter dated 15.5.2013 from the Director of Estates enclosing therewith allotment of government accommodation to various Political Parties on monthly rental as extracted below:-

Sl. No.	Name of parties	Address of Govt. Accommo	Allotment Letter	License deed	Current monthly rent charged from parties
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		ation			
1.	Indian National Congress Committee	26, Akbar Road	Enclosed	-----	Rs.8,632/- + Furniture charges
2.	Indian National Congress	24, Akbar Road	Enclosed	Enclosed	Rs.68,571/- Furniture charges
3.	Indian National Congress	5, Raisina Road	Enclosed	-----	Rs.47,665/- Furniture charges
4.	Indian National Congress	C-II/109, Chanakya-puri	Enclosed	-----	Rs.15,137/- + Furniture charges
5.	Bhartiya Janata Party	11, Ashoka Road	-----	-----	Rs.86,832/- + Furniture charges
6.	Bhartiya Janata Party	14, Pandit Path Marg	Enclosed	Enclosed	Rs.24,788/- + Furniture charges
7.	C.P.I.	AB-4, Purana Quila Road	-----	-----	Rs.1,550/-
8.	Nationalist Congress Party	10, Dr.B. D. Marg	-----	-----	Rs.1,320/-
9.	President Bahujan Samaj Party	4, G.R.G. Road	Enclosed	Enclosed	Rs.1,320/-
10.	Samajwadi Party	18, Copernicus Road	Enclosed	Enclosed	Rs.20,352/-
11.	Shri Prakash Karat, General Secretary, CPI(M)	8, Teen Murti Lane	-----	-----	Rs.1,550/-

48 Before proceeding further in this matter, it would be pertinent to have a look at the registration, recognition and functioning of Political Parties as per the existing law/rules. The following salient points need to be underlined :-

- The Political Parties are registered with the Election Commission of India (ECI) under section 29A of the Representation of People Act, 1951.
- For the purposes of R.P. Act and elections, an association/body gets the status of political party only on its registration with the ECI under section 29A.
- Para 16A of the Election Symbols (Reservation & Allotment) Order, 1968, empowers ECI to suspend or withdraw the recognition of a political party if it refuses to

follow the lawful directions and instructions of the Commission or if it refuses to observe the provisions of the Model Code of Conduct.

- As per Supreme Court judgment in Common Cause –Vs- Union of India (AIR 1996 SC-3081), ECI is empowered under Article 324 of the Constitution to require the Political Parties to submit details of expenditure incurred by them in connection with elections.
- ECI has directed the Political Parties to submit their accounts within 90 days after general elections in case of Lok Sabha and within 75 days in the case of Assembly elections.
- Under Section 29C of the R.P. Act, a Political Party is required to report to the ECI in respect of contributions received by it in excess of Rs. 20,000/- from any person or Company.
- The contributions made to the Political Parties are exempt from the Income Tax, both for the donor and the donee.
- Recognition of Political Parties is governed by the provisions of Election Symbols (Reservation and Allotment), 1968, which is an order issued by ECI under Article 324 of the Constitution read with Rules 5 & 10 of the Conduct of Election Rules, 1961, to provide for specification, reservation & allotment of symbols and recognition of Political Parties and matters related thereto.

### DECISION NOTICE AND REASONS

49. The Political Parties constitute one of the most important institutions in a constitutional democracy. Prof. Harold J Laski in his classic text “Grammar of Politics” has termed them ‘natural’, though not ‘perfect’. According to him, the life of a democratic State is built upon the party system. Without Political Parties, there would be no means available of enlisting the popular decisions in a politically satisfactory manner. To quote him

**“The life of the democratic State is built upon the party-system and it is important at the outset to discuss the part played by party in the arrangement of affairs. Briefly, that part may be best described by saying that parties arrange the issues upon which people are to vote. It is obvious that in the confused welter of the modern State, there must be some selection of problems as more urgent than others. It is necessary to select them as urgent and to present solutions of them which may be acceptable to the citizen-body. It is that task of selection, the party undertakes.**

It acts, in Mr. Lowell's phrase, as the broker of ideas. From the mass of opinions, sentiments, beliefs, by which the electorate moves, it chooses out those it judges most likely to meet with general acceptance. It organizes persons to advocate its own view of their meaning. It states that view as the issue upon which the voter has to make up his mind. Its power enables it to put forward for election candidates who are willing to identify themselves with its view. Since its opponents will do the same, the electorate, thereby, is enabled to vote as a mass and decision that would otherwise be chaotic, assumes some coherency and direction.

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What, at least, is certain, is that without parties there would be no means available to us of enlisting the popular decision in such a way as to secure solutions capable of being interpreted as politically satisfactory."

50. All modern democracies operate on a party system, some with two as in the USA and some others with multiple Political Parties like in India. The Political Parties mobilize public opinion around their ideologies and beliefs and contest elections to form government. No democracy can exist today without Political Parties. An ordinary citizen does not have direct access to the government except through his elected representative and cannot hope to be part of the government without being a member of a Political Party. His membership of a legislature depends on his membership of a Political Party to begin with. It is, thus, through the Political Parties that the citizens of a democracy operationalise the democratic state. This is precisely what Prof Laski has meant when he says that the existence of Political Parties gives the citizens of a country a viable means to give shape to their political aspirations and beliefs by forming a government of their choice. It will, therefore, not be an exaggeration to say that no Political Party, no democracy. In view of this central importance that they enjoy that the Political Parties have been given in our country such enormous powers and benefits, through both constitutional and statutory arrangements so that they can fulfill their just roles in representing their constituents.

51. The Political Parties, for example, play a critical role in the disqualification of legislators on ground of defection. As per paragraph 02 of the Tenth Schedule, a Member of a House belonging to any Political Party can be disqualified in certain circumstances. Paragraphs 01, 02 & 03 of Article 02 are extracted below:-

**"2. Disqualification on ground of defection. – (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—**

- (a) if he has voluntarily given up his membership of such political party;  
or
- (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

*Explanation – For the purposes of this sub-paragraph, --*

- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;
- (b) a nominated member of a House shall, --
  - (i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;
  - (ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.”

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52. We may also take notice of certain statutory provisions in this regard. Section 29A of the Representation of People (RP) Act, 1951, empowers the Election Commission of India (ECI) to register Political Parties for the purposes of this Act. **In other words, without such registration, a Political Party cannot participate in the electoral process.** Sub section (1) of 29-A is extracted below :-

**“(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.”**

53. Further, in exercise of its powers under Article 324 of the Constitution read with section 29A of the RP Act, 1951, and rules 05 and 10 of the Conduct of Election Rules, 1961, the Election Commission has issued the Election Symbols (Reservation & Allotment) Order, 1968. This Order has been issued for the purity of the elections in the Lok Sabha and the Legislative Assemblies of States and in the interest of conduct of such elections in a fair and efficient manner and for "the specification, reservation, choice and allotment of symbols for the recognition of Political Parties". This order lays down conditions for recognition of the National Parties and the State Parties. The Election Commission allots symbols to National and State Political Parties under para 08 of the Order. This order also provides for allotment of symbols to unrecognized Political Parties. Para 16-A of the order empowers the Commission to suspend or withdraw permission of a recognized political party for its failure to observe the model code of conduct or follow lawful directions and instructions of the Commission. Importantly, as per para 07 of the order, the Election Commission can issue Notifications in the Gazette of India publishing therein the list specifying the National Parties/State parties and the symbols respectively reserved for them. It can also issue Gazette Notifications in respect of unrecognized Political Parties and addresses of their Headquarters etc.

54. At this stage, it would be useful to crystalise the outcome of discussion held herein-before. In our view, the following facts clearly emerge:-

**(A) Legal/General**

- (a) that the Political Parties are the building blocks of a constitutional democracy;
- (b) that under Tenth Schedule of the Constitution, a Political Party can have a Member of the House disqualified in certain circumstances;
- (c) that a Political Party is required to be registered by the Election Commission of India under section 29A of the Representation of People Act, 1951;
- (d) that under section 29C of the RP Act, 1951, a Political Party is required to submit a report for each Financial Year to the Election Commission of India in respect of contributions received by it in excess of 20,000/- rupees from any person as also contributions in excess of 20,000/- rupees received from non-Government companies;

- (e) that in exercise of its powers under Article 324 read with section 29A of the RP Act, 1951 , and rules 5 & 10 of the Conduct of Election Rules, 1961, the Election Commission has issued Election Symbols(Reservation & Allotment) Order, 1968, under which election symbols are allotted to various National/State Political Parties;
- (f) that Election Commission can suspend or withdraw recognition of a recognized political party in the event of violation of provisions of Election Symbol(Reservation & Allotment) Order, 1968;
- (g) that Central Information Commission's order dated 29.4.2008 directing the Political Parties to disclose their Income Tax Returns holds the field and is being complied with.

**(B) Financial**

- (a) that the Land & Development Office of the Ministry of Urban Development has allotted large tracts of land in Delhi to various Political Parties either free of cost or at concessional rates;
- (b) that the Directorate of Estates, Ministry of Urban Development, has allotted accommodation in Delhi to various Political Parties on rental basis at concessional rates;
- (c) that Political Parties have been claiming and granted total tax exemption under section 13A of the Income Tax Act for all their income;
- (d) that the State has been indirectly financing Political Parties by way of free air time on All India Radio and Doordarshan of India during the elections; &
- (e) that recognized Political Parties are issued copies of electoral rolls by the Election Commission, free of cost, at the time of elections.

55. Section 2(h) of the RTI Act defines 'public authority' as follows :-

- (h) **“public authority” means any authority or body or institution of self-Government established or constituted,--**
  - (a) **by or under the Constitution;**
  - (b) **by any other law made by Parliament;**
  - (c) **by any other law made by State Legislature;**

- (d) **by notification issued or made by the appropriate Government, and includes any -**
- (i) **body owned, controlled or substantially financed;**
- (ii) **non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”**

56. The issue to be determined is whether these six political parties have the ingredients which would qualify them to be public authorities within the meaning of section 2(h) of the Right to Information (RTI) Act.

57. It is quite obvious that out of the many ways a public authority can be established or constituted, those provided in (a), (b), (c) and (d) above would not apply to these political parties. They have not been established or constituted by and under the Constitution; nor by any other law made by Parliament or the State Legislature; nor are these bodies owned or controlled by any appropriate government. We have to examine if these political parties would qualify under the remaining provisions. It is also true that these political parties have not been established or constituted by any specific notification issued or order made by an appropriate government as provided in (d) of this particular section. However, it is pertinent to remember that they have been brought into existence first as political parties and then as national level political parties by the Election Commission of India thereby entitling them to a host of benefits, the principal among them being the right to accept contribution from both individual citizens and private companies and also to get complete income tax exemption on all their incomes. The other important benefit that accrues to these political parties on account of their recognition by the Election Commission of India as national level political parties is the common symbol on which their candidates can contest elections. Thus, if not strictly within the letter of this particular provision (d), but at least, in spirit, these political parties can be said to have been constituted by their registration by the Election Commission of India, a fact akin to the establishment or constitution of a body or institution by an appropriate government.

58. Having said this, the next classification under which these political parties can be placed is what is provided in section 2(h)(ii). According to this provision, any non-governmental organisation which is substantially financed, directly or indirectly, by funds provided by the appropriate government would become a public authority for the purpose of the Right to Information Act. Now, the question is whether these political parties are being substantially financed, directly or indirectly, by funds provided by the appropriate

government. Both the parties in this case have placed considerable importance in favour of and against this position. While the complainants have submitted that the land and buildings provided to these political parties in the national capital at Delhi and probably elsewhere in the States and the complete income tax exemption provided to them would amount to substantial financing, the political parties themselves have strongly argued that whatever benefits they might have received from the Central Government would hardly amount to any substantial financing. While it is true that the expression “substantial” has not been defined in the Right to Information Act, in a number of decisions, the superior courts have held that “substantial financing” need not be “majority financing”. In other words, there must be evidence of state funding which is not “insubstantial” of such non-governmental bodies to bring them within the ambit of this particular provision. Keeping this in view, let us see if the tangible and intangible financial benefits extended to these political parties would amount to substantial financing.

59. The Delhi High Court in its decision dated 14.5.2010 in Krishak Bharati Cooperative Ltd. –Vs- Ramesh Chand Bawa (W.P. (C) 6129/2007 and W.P.(C) 7770/2008) has interpreted the words “and includes” as follows :-

“13. -----

The expression “and includes” {Ref : Sec.2(d)} connotes that those entities which answer the description following those words need not fall within the definition of entities that precedes those words. The word “includes” is generally understood in statutory interpretation as enlarging meaning of the phrases in the body of the statute”.

60. In the said decision (supra), the High Court has also observed

“19. -----

In the context of the RTI Act it may well be that a body which is neither a “state” for the purposes of Article 12 nor a body discharging public functions for the purpose of Article 226 of the Constitution might still be a ‘public authority’ within the meaning of Section 2(h)(d)(i) of the RTI Act. To state differently, while a ‘body’ which is either a ‘State’ for the purposes of Article 12 or a ‘body’ discharging public functions for the purpose of Article 226 is likely to answer the description of ‘public authority’ in terms of Section 2(h)(d)(i) of the RTI Act, the mere fact that such body is neither, will not take it out of the definition of ‘public authority’ under Section 2(h)(d)(i) of the RTI Act.

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61. It may now be pertinent to allude to certain decisions of the High Courts and this Commission in this regard:-

(i) In Indian Olympic Association and others –Vs- Veeresh Malik & others (WP)(C) No. 876/2007 the Delhi High Court in its decision dated 7<sup>th</sup> January 2010, held that Indian Olympic Association is a public authority under section 2(h). The relevant paragraph is extracted below:-

“Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions – even individuals, the circumstance that it is funded for the limited purpose of air fare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is “public authority” under the meaning of that expression under the Act.”

(ii) In the same judgment, the Delhi High Court also held the Sanskriti School to be public authority. The relevant paragraph is extracted below:-

“As discussed earlier, grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort. Here, by all accounts, the grants – to the tune of Rs. 24 crores were given to the school, without any obligation to return it. A truly private school would have been under an obligation to return the amount, with some interest. The conditionality of having to admit children of employees of the Central Government can hardly be characterized as a legitimate public end; it certainly would not muster any permissible classification test under article 14 of the Constitution. The benefit to the school is recurring; even if a return of 10% (which is far less than a commercial bank’s lending rate) is assumed for 6 years, the benefit to the school is to the tune of Rs. 14.88 crores. This is apart from the aggregate grant of Rs. 24.8 crores, and the nominal concessional rate at which the school was allotted land for construction.

On a consideration of all the above factors, this court holds that the school fulfils the essential elements of being a non-government organization, under Section 2(h) of the Act, which is substantially financed by the Central Government, through

various departments, and agencies. It is therefore, covered by the regime of the Act.”

(iv) In decision dated 22.4.2010 in Amardeep Walia –vs- Chandigarh Lawn Tennis Association (File No. CIC/LS/C/2009/900377), the Central Information Commission held Chandigarh Lawn Tennis Association to be public authority. Para 19 of the order is extracted below:-

**“19. The gravamen of the above judgments is that for a private entity to qualify to be a public authority, substantive financing does not mean ‘majority’ financing. What is important is that the funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals.” The ratio of the above judgments, particularly of Delhi High Court, applies to the present case on all the fours. A huge property has been placed at the disposal of CLTA by the Chandigarh Administration at a notional rental of Rs.100/- per annum. Besides, grant of one lakh rupees was also given to CLTA in FY 2008-09. Concededly, CLTA fulfills the felt need of a section of the society by way of imparting training to the budding tennis players. It is, therefore, held that CLTA is a Public Authority.”**

(v) In another decision dated 21.1.2011 in Pradeep Bhanot –Vs- Chandigarh Club, Chandigarh (File No. CIC/LS/A/2010/001184), the Central Information Commission held that the Chandigarh Club was a public authority. The broad facts in this case were that a plot of land measuring 3.85 lacs sq.ft. was leased out to the Club at the rent of Rs. 1,08,208/- per month w.e.f. 20.7.2005 to 19.7.2010 with annual increase of 5%. The Finance Department of Chandigarh Administration had submitted before the Commission that the aforesaid rent was not at par with the market rent. Considering the totality of circumstances, the Commission had concluded that Chandigarh Club was public authority under section 2(h). Paras 03 & 04 of the order are extracted below :-

**“3. We have now received a response from the Finance Department of the Chandigarh Administration under the signatures of the Joint Secretary, Finance. Paras 02 & 03 thereof are extracted below :-**

**“2. In this regard it is informed that the bodies like Chandigarh Club etc are providing the public service and while fixing the rate of rent in such bodies, this aspect is taken into consideration. In view of the public services being provided by these bodies, the said bodies can not be termed as commercial sites. Due to this reason, the rent of Chandigarh Club was fixed as Rs 1,08,208/- per month with effect from 20.7.2000 with annual increase of 5%. It is not out of place to mention here that other similarly situated bodies like Chandigarh Golf Club and Chandigarh Golf Association which are also providing the public services have been kept at par with Chandigarh Club while determining the rate of rent. In case we consider the Chandigarh Club as commercial site, then the rent comes**

out to be rupees to 3157400 per month. Keeping in view the urban character of the city, rent being charged from the Chandigarh Club is not at par with the market rent. Further, by charging the rent at a lower rate, it will make amply clear that the Chandigarh Administration is indirectly financing the promotion of services being rendered by the Chandigarh Club.

3. In view of the aforesaid circumstances and in view of the fact that said club is being indirectly financed for promotion of public services by the Chandigarh Administration the same is squarely covered under the definition of 'public authority' as defined under section 2 (h) (ii) of the RTI Act, 2005."

4. In view of the categorical position taken by the Chandigarh Administration extracted above and the fact that there is vast differential between the monthly rental being paid by the Chandigarh Club and the commercial rent that the premises could fetch in the open market (as estimated by the Finance Deptt), we are of the opinion that the Chandigarh Club is being indirectly financed by the Chandigarh Administration. In this view of the matter, we hold that the Chandigarh Club is 'public authority' u/s 2 (h) (ii) of the RTI Act. Hence, the club management is hereby directed to put in place a mechanism for servicing the RTI Act."

(vii) Further-more, in Amrit Mehta -Vs- India International Centre (File No. CIC/WB/A/2009/000965/LS) decided on 1.2.2011, the Commission held that India International Centre is a public authority under section 2(h). The broad facts in this case were that 4.69 acres of prime land was given on perpetual lease to IIC against deposition of Rs. 1,68,840/- as per agreement signed on 22.4.1960 between the President of India and IIC. The yearly rent payable by IIC to the Central Government was Rs. 8,442/- which has remained unchanged during the last five decades. In the facts of the case, the Commission had held as follows :-

"XVIII. In view of the above discussion, it clearly emerges that a huge chunk of land measuring 4.69 acres was allotted to IIC in 1968 at a premium of Rs. 1,68,840/- only, obviously, at a concessional rate. The agreement between the parties expressly speaks of concessional allotment of land. Further, IIC was required to pay rent of Rs. 8,442/- per year to the Central Government and this amount has remained unchanged during the last 52 years. This is also clearly indicative of the rent being nominal/concessional in nature. These facts clearly establish that the Central Government has indirectly financed IIC. The RTI Act does not define 'substantial financing'. The expression 'substantial financing' has to be interpreted in the context of a specific case. This has been so held by the Punjab and Haryana High Court in Civil Writ Petition No. 19224/2006(The Hindu Urban Cooperative Bank Ltd. -Vs- State Information Commission, Punjab) extracted above. Considering the fact that a huge chunk of land was allotted to IIC in 1960 in the very heart of the capital city of Delhi at a premium of Rs.1,68,840/- only and also considering the fact that IIC is paying rent of only Rs. 8,442/- per year to the Central Government over all these years,

**in our opinion, amounts to indirect substantial financing of IIC by the Central Government. In this view of the matter, we hold that IIC is a Public Authority under section 2(h) of the RTI Act.”**

(vii) Yet another decision of this Commission needs to be adverted to in this connection. 6,000 Sq. Mts. of land was allotted to Delhi Public School, Rohini, by DDA at a highly subsidised rate of Rs. 65 lacs per acre in February, 1997. Another plot of land measuring 10,000 sq. mtrs. was also allotted to DPS, Rohini, for a play ground on temporary basis on payment of nominal ground rent of only Rs. 10/- per annum. The question before the Commission was whether DPS, Rohini, can be deemed to be a Public Authority in terms of section 2(h) of the RTI Act. Vide decision dated 23.8.2011 in File No. CIC/SG/C/2010/001036/AD, this Commission held that in the facts and circumstances of the case, DPS, Rohini, is a Public Authority under section 2(h). The reasoning given by the Commission is encapsulated in the para extracted hereinafter.

“Considering the above factual matrix of the case at hand, one can sum up that 6000 sq. mts of land has been given to the school at a concessional rate of Rs. 65 lacs per acre and 1-0,000 sq. mts of land at a highly subsidised nominal ground rent of Rs. 10/- per Annum by DDA. The School is under the governance, control and regulation of the Delhi Schools Education Act 1973, Rule 50 whereof mandates disclosure of information in the form of reports etc. to the Director of the Directorate of Education, the Administrator and concerned authority from the Central Government, as already discussed above. The Directorate of Education has appointed two nominees in the key Managing Committee of the School thereby ensuring position of power of managing affairs of the School and having control over the Respondent School.”

62. The question before the Commission is whether INC/AICC, BJP, CPI(M), CPI, NCP and BSP can be held to be Public Authorities under section 2(h) of the RTI Act. The complainants have adduced the following three principal grounds to persuade the Commission to hold that the aforesaid Political Parties are Public Authorities viz:-

- (i) Indirect substantial financing by the Central Government;
- (ii) Performance of public duty by the Political Parties; and
- (iii) Constitutional/legal provisions vesting Political Parties with rights and liabilities.

63. Now we will take these facets one by one.

**Substantial financing of Political Parties by the Central Govt.**

64. The complainant has vehemently pleaded that Political Parties are substantially financed by the Central Government in multiple ways. The first and foremost method of indirect financing is allotment of large tracts of land in prime areas of Delhi either, free of cost, or at concessional rates. Information supplied by complainant Shri Anil Bairwal is depicted in a tabular form at para 18(iv) of this order. This information has been confirmed to the Commission by L&DO as per details given in para 43 of this order.

65. Even allowing for the margin of error in the estimation of the value of land allotted to various political parties by complainant Shri Bairwal, we have reasons to believe that this land has been allotted at hugely concessional rates. The lease value of these properties in the open market has not been placed before us. Even so, we strongly believe that the premium and the lease rent being charged from the Political Parties does not reflect the true value of these properties. This, in our considered opinion, amounts to indirect financing and when added to the income tax exemption enjoyed by these political parties, it would amount to substantial financing.

66. We may also like to add that the complainants have proffered information before the Commission in regard to the lands allotted at Delhi by the Central Government. We are informed that such allotments have also been made at the State capitals by the State Governments. If so, this only reinforces the complainants' contention that the appropriate Governments have indirectly financed Political Parties in a big way.

67. Another method of financing of Political Parties by the Central Government is allotment of houses on rental basis on concessional rates. Information given by the complainant, Shri Bairwal in this regard is mentioned at para 17 of this order which need not be repeated. The Directorate of the Estates, Ministry of Urban Development has also corroborated allotment of various properties to these political parties on rental basis. The rent being charged from the Political Parties is shown in the last column of the said table. The rental value of these properties

in the open market has not been placed before us. Even so, we strongly believe that the rent being charged from the Political Parties does not reflect the true rental value of these properties. This arrangement also contributes to the indirect financing of Political Parties.

68. Of the various benefits that the central government extends to these political parties, the total exemption from payment of income tax on their incomes, very obviously, constitutes the most important benefit. Section 13 A of the Income Tax Act reads as follows:

**“Any income of a political party which is chargeable under the head income from house property or income from other sources or capital gains or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:**

**Provided that -**

**(a) such political party keeps and maintains such books of account and other documents as would enable the assessing officer to properly deduce its income therefrom;**

**(b) in respect of each such voluntary contribution in excess of Rs. 20,000, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and**

**(c) the accounts of such a political party are audited by an accountant as defined in the explanation below subsection 2 of section 288:**

**Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under subsection 3 of section 29C of the Representation of the People Act 1951 for the financial year, no exemption under this section shall be available for that political party for such financial year.”**

69. Since these political parties have not paid any income tax, the exact quantum of money that the Central Government has forgone in the process has not been worked out specifically. However, since the level of income of all these political parties would place them in the highest slab of income tax, at least 30% of their total income would have been collected as income tax but for the total exemption given to them by law. By a simple calculation, this would show that the Central Government has bestowed financial benefits on the six political parties to the extent of the amount shown against each as per the following table:

Party	Tax Payable exempted in FY 2006-07(Rs)	Tax payable exempted in FY 2007-08 (Rs)	Tax payable exempted in FY 2008-09 (Rs)	Tax payable exempted in 3 years (Rs)
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	crores)	crores)	crores)	crores)
<b>BJP</b>	<b>26.86</b>	<b>40.68</b>	<b>73.71</b>	<b>141.25</b>
<b>INC</b>	<b>57.00</b>	<b>75.05</b>	<b>168.87</b>	<b>300.92</b>
<b>BSP</b>	<b>15.44</b>	<b>23.60</b>	<b>0.80</b>	<b>39.84</b>
<b>CPI(M)</b>	<b>6.98</b>	<b>4.62</b>	<b>6.53</b>	<b>18.13</b>
<b>CPI</b>	<b>0.01</b>	<b>0.21</b>	<b>0.02</b>	<b>0.24</b>
<b>NCP</b>	<b>0.90</b>	<b>0.68</b>	<b>8.06</b>	<b>9.64</b>

70. Thirty per cent of their income which these political parties would have otherwise paid by way of income tax has been given up in their favour by the Central Government. No one can dispute that this is substantial financing, though indirectly. Added to this the concessional allotment of land and buildings in prime locations in the national capital and, probably, in several state headquarters, if not at district level also, the total amount of direct and indirect financing/funding of these political parties is considerable. On behalf of the political parties, it has been argued that the income tax exemption cannot be said to be a form of financing. In support of this argument, they have submitted that such concessions and exemptions are routinely extended to many charitable and non-profit non-governmental organisations across the country. Therefore, according to them, if those numerous non-governmental organisations are not considered to be public authorities, there is no reason why the political parties should be considered so. We cannot accept this argument. There is a great difference between the tax exemption given to charitable and non-profit non-governmental organisations and that given to the political parties. The exemption given to the former is strictly conditional: full or part exemption is given to these organisations only if they pursue the objectives outlined in their respective charters, be it the memorandum of association and bye-laws in case they are societies or the trust deeds, in case they are private trusts. There are other strict conditions laid down in the Income Tax Act which the assessee must comply with. In other words, if any of these non-governmental organisations are found not to be pursuing their objectives or spending the tax exempt amount on activities other than what is enshrined in their respective charters or not comply with the conditions, their entire income becomes subject to taxation, sometimes with penalty. On the other hand, the tax exemption given to the political parties is complete, the only condition being that they must report to the Election Commission of India, every year, the details of all the contributors who contribute Rs. 20,000 or more to the political party concerned. Thus, the political parties enjoy an almost unfettered exemption from payment of income tax, a benefit not enjoyed by any other charitable or non-profit non-governmental organisations.

71. It has been also argued before us that Political Parties are beneficiaries of free air time on All India Radio. The amounts spent by the State in this regard on AIR for Lok Sabha Elections – 2009 in respect of various Political Parties is depicted in para 18(ii) of this order. Similarly, the amounts spent by the State on free air time on Doordarshan on various Political Parties is depicted in para 18(iii). These amounts may be small but they contribute to the kitty of Political Parties at the Government cost.

72. In view of the above, we are of the considered opinion that Central Government has contributed significantly to the indirect financing of Political Parties in-question.

73. However, the question remains whether the aforesaid financing can be held to be ‘substantial financing’ in terms of section 2(h)(d)(i) of the RTI Act. Justice Ravindra Bhat of Delhi High Court in judgment dated 7.1.2010 in Indian Olympic Association –vs- Veeresh Malik and Ors. (WP)(C) No. 876/2007 has observed that the expression ‘Public Authority’ has to be interpreted liberally and not restrictively. Paras 45 & 46 of his order are extracted below :-

**“45. Now, if the parliamentary intention was to expand the scope of the definition “public authority” and not restrict it to the four categories mentioned in the first part, but to comprehend other bodies or institutions, the next question is whether that intention is coloured by the use of the specific terms, to be read along with the controlling clause ‘authority ... of self government” and “established or constituted by or under” a notification. A facial interpretation would indicate that even the bodies brought in by the extended definition :**  
**(i) “Body owned, controlled or substantially financed;**  
**(ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.”**  
**are to be constituted under, or established by a notification, issued by the appropriate government. If, indeed, such were the intention, sub-clause (i) is a surplusage, since the body would have to be one of self government, substantially financed, and constituted by a notification, issued by the appropriate government. Secondly – perhaps more importantly, it would be highly anomalous to expect a “non-government organization” to be constituted or established by or under a notification issued by the government. These two internal indications actually have the effect of extending the scope of the definition “public authority”; it is, thus, not necessary that the institutions falling under the inclusive part have to be constituted, or established under a notification issued in that regard. Another significant aspect here is that even in the inclusive part, Parliament has nuanced the term; sub-clause (i) talks of a “body, owned, controlled or substantially financed” by the appropriate government (the subject object relationship ending with sub-clause (ii). In the case of control, or ownership, the intention here was that irrespective of the**



constitution (i.e. it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or substantial financing. The second class, i.e. non-government organization, by its description, is such as cannot be “constituted” or “established” by or under a statute or notification.

46. The term “non-government organization” has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of “international NGO” (INGO) in Resolution 288(X) of ECOSOC on February 27, 1950 as “any international organization that is not founded by an international treaty”. According to Wikipedia “...Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, “non-governmental organization” is term in general use but is not a legal definition. In many jurisdictions these types of organization are defined as “civil society organizations” or referred to by other names...” Therefore, inherent in the context of a “non-government” Organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the “substantial financing” criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies.”

74. As to the question of ‘substantial financing’, the Delhi High Court in the said judgment has held that ‘majority’ test is not appropriate to decide whether or not an Organisation is substantially financed, directly or indirectly, by the appropriate Government. It has been observed that financing in percentage terms in relation to the total budget of the body is not important. To quote:-

“60. This court therefore, concludes that what amounts to “substantial” financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not “majority” financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of nongovernment organization means that it is independent of any manner of government control in its establishment, or management. That the

organization does not perform – or pre-dominantly performs – “public” duties, too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government’s policy fulfillment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing.”

75. A similar view has been taken by the Karnataka High Court in Bangalore International Airport Limited – Vs – Karnataka Information Commission (WP 12076/2008) The operative para of the order dated 9.2.2010 is extracted below :-

“It is to be noticed that as observed earlier, wording, “non-government organisation substantially financed, directly or indirectly” is required to be split into two. Whether the non-government organisation is substantially financed directly that is the cash flow would come from the Government agency or indirectly which would necessarily mean that the exemptions are granted to the non-government organisation. In the case on hand, it is to be noticed that a perusal of the agreements would conclusively go to show that the petitioner-BIAL is a beneficiary of innumerable exemptions which, if one were to translate into cash flow would certainly cascade into a substantial amount. Another factor which is required to be taken note of is large chunk of land to the extent of 4000 acres of prime agricultural land is acquired by paying enormous amounts as compensation to the farmers who owned the lands. It is estimated that this amount would run into hundred of crores .”

The Learned Judge further held that :-

“Let us now consider what are the implications of the words ‘substantially financed’. It is obvious that as per Section 2(h)(i) “body substantially financed” would be a body where the ownership may not lie with the Government, nor the control. Hence clearly the wording ‘substantially financed’ would have to be given meaning at less than 50% holding. The company law gives significant rights to those who own 26% of the shares in a company. Perhaps this could be taken to define the criterion of ‘substantial finance’. The finance could be as equity or subsidies in land or concession in taxation”.

76. The gravamen of the above judgments is that for a private entity to qualify to be a public authority, substantial financing does not mean majority financing. What is important is that the funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals”. The ratio of the above judgments, particularly of Delhi High Court, applies to the present case. Large tracts of land in prime areas of Delhi have been placed at the disposal of the Political Parties in-question at exceptionally low rates. Besides, huge Government accommodations have been placed at the disposal of Political Parties at hugely

cheap rates thereby bestowing financial benefits on them. The Income Tax exemptions granted and the free air time at AIR and Doordarshan at the time of elections also has substantially contributed to the financing of the Political Parties by the Central Government. We have, therefore, no hesitation in concluding that INC/AICC, BJP, CPI(M), CPI, NCP and BSP have been substantially financed by the Central Government and, therefore, they are held to be public authorities under section 2(h) of the RTI Act.

### **Performance of Public Duty**

77. The Political Parties are the life blood of our polity. As observed by Laski “The life of the democratic state is built upon the party system”. Elections are contested on party basis. The Political Parties select some problems as more urgent than others and present solutions to them which may be acceptable to the citizens. The ruling party draws its development programs on the basis of its political agenda. It is responsible for the growth and development of the society and the nation. Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty. It is, therefore, important that they become accountable to the public.

78. Political Parties are the unique institution of the modern constitutional State. These are essentially political institutions and are non-governmental. Their uniqueness lies in the fact that in spite of being non-governmental, they come to wield or directly or indirectly influence exercise of governmental power. It would be odd to argue that transparency is good for all State organs but not so good for Political Parties, which, in reality, control all the vital organs of the State.

79. In the W.P. No.12076 of 2008 dated 9.2.2010 in the case of Bangalore International Airport Limited vs Karnataka Information Commission, the Karnataka High Court has held that:-

*“A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as a public authority or body, and the meaning of a public authority or body may vary according to the statutory context; one of the distinguishing features of an authority not being a public authority, is profit making. It is not incumbent that a body in order to be a public body must always be constituted by a statute; for an authority to be a ‘public authority’ it must be an authority exercised or capable of being exercised for the benefit of the public”*

80. The purity of elections assumes critical significance in this context. In *Union of India vs. Association of Democratic Reforms & Anr* (AIR 2002 SC 2112), the Supreme Court has laid emphasis on the purity of elections in the following words:-

**“To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the Political Parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basis elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.”**

81. The National Commission to Review the Working of the Constitution in its report submitted in March 2002 has recommended that Political Parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. In *Common Cause (A Registered Society vs. Union of India)* (AIR 1996 SC 3081), the Supreme Court has dealt with the income and expenditure incurred by the Political Parties and has laid emphasis on transparency on election funding.

82. The people of India must know the source of expenditure incurred by Political Parties and by the candidates in the process of election. These judicial pronouncements unmistakably commend progressively higher level of transparency in the functioning of Political Parties in general and their funding in particular.

83. We may also add that the preamble to the Constitution of India aims at securing to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; and, EQUALITY of status and of opportunity. Coincidentally, the preamble of RTI Act also aims to promote these principles in the form of transparency and accountability in the working of the every public authority. It also aims to create an ‘informed citizenry’ and to contain corruption and to hold government and their instrumentalities accountable to the governed. Needless to say, Political Parties are important political institutions and can play a critical role in heralding transparency in public life. Political Parties continuously perform public functions which define parameters of governance and socio-economic development in the country.

84. In view of the nature of public functions performed by Political Parties and the dicta of the High Court extracted above, we conclude that Political Parties in question are Public Authorities under section 2(h) of the RTI Act.

**Constitutional/legal provisions vesting Political  
Parties with rights and liabilities**

85. The appellants have also contended that Political Parties have constitutional and legal rights and liabilities and, therefore, need to be held to be Public Authorities. The argument runs thus. Political Parties are required to be registered with the ECI under section 29A of the R.P. Act, 1951 – a Central Legislation. An association or body gets the status of a political party on its registration. ECI awards symbols to Political Parties under the Election Symbols(Reservation and Allotment) Order, 1968, only after registration. The ECI calls for details of expenses made by the Political Parties in the elections. Contributions of the value of Rs. 20,000/- and above received from any person or a Company by a Political Party are required to be intimated to ECI under section 29C of the R.P. Act. ECI is vested with the superintendence, direction and control of elections under Article 324 of the Constitution. ECI is also vested with the authority to suspend or withdraw recognition of a political party in certain contingencies. More importantly, Political Parties can recommend disqualification of Members of the House in certain contingencies under the Tenth Schedule. The contention is that the aforesaid constitutional/statutory powers of Political Parties bring them in the ambit of section 2(h).

86. We find the above submissions quite compelling and unerringly pointing towards their character as public authority.

**Stand of Political Parties**

87. It may be recalled that the INC/AICC and the BJP have made a bland assertion that they are not Public Authorities under the RTI Act. CPI(M) has disclosed some information to the Commission regarding allotment of land to it by the Central Government on certain terms and conditions but has not conceded that it is Public Authority under section 2(h) of the RTI Act. The contentions of the above parties have to be rejected in the light of findings recorded herein above.

88. Interestingly, the CPI office bearers have taken a contradictory stand. While Shri A.B. Bardhan in his letter dated 21.3.2011 addressed to Shri Anil Bairwal has stated that CPI is a Public Authority under section 2(h), on the other hand Shri Sudhakar Reddy, vide letter dated 24.9.2012 sent to the Commission, has taken the stand that Political Parties do not fall in the ambit of section 2(h). As the stand of CPI is confusing, it does not call for any comments.

89. However, the submissions made by Shri A.A. Tiwari, counsel for Nationalist Congress Party need to be dealt with at some length. It is his contention that free air time granted to the NCP during the elections on National Television and National Radio does not amount to government financing of NCP as it is a popular practice in other democracies of the world. According to him, free provisioning of electoral rolls of Political Parties is a statutory requirement and cannot be construed as substantial financing. Similarly, allotment of plots of land/Government accommodation to Political Parties at economical rates cannot be construed as substantial financing. Similarly, tax exemption under section 13A given to Political Parties under the provisions of the statute also cannot be construed as financing of Political Parties by the Central Government.

90. The arguments of Shri Tiwari cannot be accepted by us in the light of statutory provisions and the case law referred to hereinabove and they have to be rejected. We may further add that his contention that NCP has received less than 1.55% of its total funding from the Government also cannot be accepted by us as he has not produced any figures before us to substantiate this claim. Further, assuming that these figures are true, this contention is liable to be rejected on the ground that NCP, being a Political Party, performs public functions, which along with other reasons mentioned above, qualifies it to be Public Authority under section 2(h).

91. Yet another contention of Shri Tiwari is that if Political Parties are held to be Public Authorities, then the political rivals would maliciously flood their CPIOs with numerous RTI applications at the time of elections thereby wasting their time and energy and, thus, causing detriment to their political functioning. In our view, the validity of a statute cannot be questioned only on the basis of presumption of its possible misuse. On the contrary, we are of the opinion that bringing the Political Parties in the ambit of RTI Act is likely to usher an era of transparency in their functioning. Besides it would result in strengthening of democracy and

democratic institutions in the country. In view of the above discussion, we do not find any merit in the submissions of Adv. Tiwari and reject the same.

92. In view of the above discussion, we hold that INC, BJP, CPI(M), CPIO, NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act.

93. The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

94. The complaints are disposed off as per the above directions.

(Mrs. Annapurna Dixit)  
Information Commissioner

(M. L. Sharma)  
Information Commissioner

( Satyananda Mishra )  
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the Additional Registrar of this Commission.

No. 1/13/2013 - IR  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel and Training

**ANNEXURE – II**

(Refer to para 4.2, page 5 of the note)

**AN EXTRACT OF REPRESENTATION OF THE PEOPLE ACT, 1951**

**29A. Registration with the Election Commission of associations and bodies as political parties.** — (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made, —

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a



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specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub—section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub—section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.

**29B. Political parties entitled to accept contribution.**—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

*Explanation.*—For the purposes of this section and section 29C,—

(a) “company” means a company as defined in section 3;

(b) “Government company” means a company within the meaning of section 617; and

(c) “contribution” has the meaning assigned to it under section 293A, of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and

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(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

**29C. Declaration of donation received by the political parties.—**(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

- (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;
- (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

**75A. Declaration of assets and liabilities.—**(1) Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to—

- (i) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;
- (ii) his liabilities to any public financial institution; and
- (iii) his liabilities to the Central Government or the State Government,

to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

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(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate for a House of Parliament referred to in sub-section (1) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

*Explanation.*—For the purposes of this section,—

(i) “immovable property” means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(ii) “movable property” means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

(iii) “public financial institution” means a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956), and includes bank;

(iv) “bank” referred to in clause (iii) means—

(a) State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(b) subsidiary bank having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

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- (c) Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);
- (d) corresponding new bank having the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and
- (e) co-operative bank having the meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) as modified by sub-clause (i) of clause (c) of section 56 of that Act; and
- (v) "dependant children" means sons and daughters who have no separate means of earning and are wholly dependant on the elected candidate referred to in sub-section (1) for their livelihood.

**77. Account of election expenses and maximum thereof.**—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

*Explanation 1.*—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

*Explanation 2.*—For the purposes of clause (a) of *Explanation 1*, the expression "leaders of a political party", in respect of any election, means,—

- (i) where such political party is a recognised political party, such persons not exceeding forty in number, and
- (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

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whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

**78. Lodging of account with the district election officer.**—(1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

**125A. Penalty for filing false affidavit, etc.**—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or  
(ii) give false information which he knows or has reason to believe to be false; or  
(iii) conceals any information,  
in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

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**ANNEXURE – III**

(Refer to para 5.1, page 7 of the note)

**COMMENTS OF MINISTRY OF LAW AND JUSTICE**

**Department of Legal Affairs**

**02/07/2013**

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DoPT has sought views of this Department on a draft Note for the Cabinet (PUC) for seeking approval of the Cabinet containing a proposal to bring an ordinance under clause (1) of Article 123 of the Constitution to amend the RTI Act, 2005 (the Act) so as to explicitly provide in the definition of “public authority” that “public authority” shall not include any political party registered u/s 29A of the Representation of the People Act, 1951 with an object to nullify the order dated 03.06.2013 passed by the CIC against the national political parties.

2. The CIC held that these political parties are public authorities u/s 2(h) of the Act and directed the Presidents, General Secretaries of these political parties to designate CPIOs and the Appellate Authorities at the headquarters in 6 weeks time.

3. Para 3.2 of the Note reveals that “during the process of enactment of the RTI Act, it was never visualized or considered to bring the political parties within the ambit of the said Act. If the political parties are held to be public authorities under the RTI Act, it would hamper their smooth internal working. Further, it is apprehended that political rivals might file RTI applications with malicious intentions to the CPIOs of the political parties, thereby affecting their political functioning.

4. The proposed amendment under the Act are mentioned in para 3.4 of the Note i.e. (i) to insert the two Explanations in clause (h) of Section 2 of the Act, (ii), to insert a new clause (ca) after clause (c) of Section 8(1) of the Act, (iii) to insert a new section 32 after section 31 of the Act and (iv) to give retrospective effect to the amendments from 3<sup>rd</sup> day of June, 2013.

5. We have examined the Note. The proposed insertion of two Explanations in clause (h) of Section 2 of the Act may not be able to achieve the purpose to provide immunity / exemption to such political parties from disclosure of information under the Act. It is felt that if a proviso is inserted in the clause (h) of Section 2 of the Act with the following stipulations, it may serve the intent and purpose:-

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"Provided that term 'public authority' does not include any 'political party' registered u/s 29A of the Representation of the People Act, 1951 and recognized by the Election Commission of India as a 'National Party' or 'State Party' under the Election Symbols (Reservation and Allotment) Order, 1968".

6. In view of the above, it would appear that insertion of a new clause (ca) after clause (c) of Section 8(1) of the Act may not be necessary. Proposed new section 32 after section 31 of the Act giving overriding effect, as has been proposed in clause (c) of para 3.4 of the Note would need suitable modification from legislative angle. Also, there is need of giving retrospective effect to the amendments. The administrative Department has proposed retrospective effect from 3<sup>rd</sup> day of June, 2013. We however suggest that keeping in view the intention of Parliament not to include the registered and recognized "political parties" in the ambit of the Act, the proposed amendment may be made effective from the date of commencement of RTI Act so as to clarify the position.

7. Article 123 (1) of the Constitution provides that if at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

8. The proposal as contained in the draft note is a matter of policy and subject to our comments mentioned in paras 5 & 6 above, there appears to be no legal or constitutional objection. Hence, we may concur in the same.

May kindly see.

**Legislative Department  
02/07/2013**

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The Department of Personnel and Training (the administrative Department) has forwarded a draft Note for the Cabinet seeking its approval to promulgate an Ordinance under clause (1) of article 123 of the Constitution to amend the Right to Information Act, 2005, so as to clarify that the political parties do not come within the ambit of the said Act, keeping in view the recent order passed by the Central Information Commission (CIC) bringing the political parties within the purview of the RTI Act.

2. It may be recalled that recently the CIC has passed an order in File Nos. CIC/SM/C/2011/001386 & 000838, dated 3<sup>rd</sup> June, 2013 bringing the political parties within the ambit of the RTI Act. The CIC in its order holds the view that political

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parties are substantially financed by the Central Government under section 2(h) (ii) of the RTI Act. The CIC has further observed that the role played by the political parties in our democratic set up and the nature of duties performed by them also point towards their public character bringing them in the ambit of section 2(h). The present order set aside a Single Bench order of the Commission and held certain political parties as "public authorities" under section 2(h) of the RTI Act.

3. The CIC in Paragraph 54 of the order has expressed the view that – (i) large tracts of land in Delhi to various political parties has been allotted by the Government either free of cost or at concessional rates; (ii) Government allotted accommodation to political parties on rental basis at concessional rates; (iii) political parties have been claiming and granted tax exemption under section 13A. of the Income-Tax Act for all their income; (iv) the State has been indirectly financing political parties by way of free air time in AIR and Doordarshan during elections; and (v) recognized political parties are issued electoral rolls by Election Commission free of cost at the time of election. The CIC has also summarized the legal and general aspects of the political parties.

4. India stands as a model for many emerging democracies around the world. Free and fair elections are the hall mark of a well functioning democracy. The general elections in India are a mammoth exercise, with over 700 million voters, and about one million polling booths in the country. This awe inspiring efforts is widely hailed as a model for the conduct of free and fair elections. In our experience of holding elections for six decades, a number of issues have come to the fore from time to time. Legislative changes were made; the Election Commission developed a Code of Conduct, and passed several instructions with a view to conducting elections in a smooth manner.

**Preparation of Electoral Rolls:**

5. The CIC in its order has observed that the recognized political parties are issued electoral rolls by the Election Commission free of cost at the time of election. In this regard, it may be stated that the electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole process is vitiated. In the existing system, the Election Commission prepares electoral roles for Parliamentary and Assembly constituencies, and the State Election Commissions prepare electoral rolls for local elections. This is one of the functions assigned to the Election Commission under article 324 read with article 325 of the Constitution. Thus, it may be seen that providing copies of electoral rolls by the Election Commission to political parties is to facilitate the proper conduct of elections.



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Registration of Political Parties

6. The political parties are registered with the Election Commission under the provisions of section 29A of the Representation of the People Act, 1951. Under this section any small group of persons, if they so desire, can be registered as a political party by making a simple declaration under sub-section (5) of section 29A. As on 18.01.2013, 1444 political parties are registered with the Election Commission out of which 52 are recognized (National/State) parties and 1392 are registered unrecognized political parties. In the last general election to the House of the People held in 2009 (15<sup>th</sup> Lok Sabha), 366 political parties had put up their candidates. With reference to the political parties, detailed provisions exist in the Representation of the People Act, 1951 which provides for dissemination of information relating to political parties, candidates and donations. The said Act, *inter alia*, provides for \_

- (i) Registration with the Election Commission of associations and bodies as political parties (section 29A).
- (ii) Political parties entitled to accept contribution (section 29B).
- (iii) Declaration of donation received by the political parties (section 29C).
- (iv) Declaration of assets and liabilities (section 75A).
- (v) Account of election expenses and maximum thereof (section 77).
- (vi) Lodging of account with the district election officer (section 78).
- (vii) Penalty for filing false affidavit etc. (section 125A).

Tax exemption to Political Parties:

7. The above provisions of the RP Act, 1951 indicate that there are sufficient provisions in the Act to deal with each and every aspect of financing its declaration and punishment for filing false affidavit and all such information are made available to the public through the website of the Election Commission. Moreover, under section 13A of the Income-tax Act, 1961, the political parties claiming exemption from tax are required to file their return of income before the due date before the tax authorities along with audited accounts; and form 24A prescribed under section 29C of the RP Act, 1951 read with Rule 85B of the Conduct of Election Rules, 1961 declaring the list of persons making donations to the political parties exceeding 20,000/- rupees.

8. As per section 138 of the Income-tax Act, any information with the Income-tax Department would be ordinarily held confidential, but can be made public, if in the judgment of the Commissioner of Income-tax, it serves public purpose. In order to provide a level playing field to the contesting candidates and to prevent abuse of money power during elections, ceiling on expenditure to be incurred by them has

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been prescribed under rule 90 of the Conduct of Election Rules, 1961. On 23<sup>rd</sup> February, 2011, the expenditure ceiling for Lok Sabha seat has been raised to 40 lakhs rupees (except small States and Union territories) and for Assembly constituencies 16 lakhs (except small State and Union territories).

9. Under section 10A of the RP Act, 1951, for failure to lodge the account of election expenses as per the requirement of law, the defaulting candidate may be disqualified by the Election Commission for three years from the date of the order of disqualification. Section 29C of the RP Act, 1951, provides that each political party shall submit report to the Election Commission (before filing its income-tax return) regarding all contributions in excess of 20000/- rupees received by it in a financial year and failure to submit this report will deprive them of the tax benefit. Further, the candidates are required to file affidavit along with their nomination papers giving the annual income of the candidate and filing of false affidavit attract punishment for furnishing wrong information.

10. The CIC's order bringing the political parties within the ambit of RTI Act has raised a doubt about its propriety. The RTI Act was enacted to provide for an effective framework for effectuating the right of information recognized under article 19 of the Constitution. Obviously, the RTI Act was enacted to ensure greater and more effective access to information by making the Freedom of Information Act, 2002 more progressive, participatory and meaningful. During the processing of the RTI Act, it was never visualized or considered to bring the political parties within the ambit of the said Act. The definition of public authority given in clause (h) of section 2 of the RTI Act is well defined to include only such authority or body constituted by or under the Constitution or by any law made by Parliament which is substantially financed directly or indirectly by funds provided by the appropriate Government. The political parties do not fall within the parameters of the definition of public authority given in the RTI Act, as they are only registered and recognized under the RP Act, 1951.

11. If we look at the provisions contained in section 29B of the RP Act, which makes it amply clear that political parties accept contributions voluntarily offered to it by any person or company other than a Government company. From the reading of provisions contained in 29B, it may be seen that the acceptance of contribution differ literally, as well as legally, from the concept of substantially financed by the Government. Keeping this in view, it becomes necessary to insert an Explanation in clause (h) of section 2 of the RTI Act and to clarify in Section 8 that political parties are exempted from disclosure of information. We may also have to add a validation clause in the RTI Act, to take care of the implications of the far expanded definition of 'public authority' as enunciated in the order of the CIC.

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12. The Department of Legal Affairs has observed that instead of giving retrospective effect from the 3<sup>rd</sup> day of June, 2013, the date on which the CIC has passed the order, the proposed amendments to the RTI Act may be made effective from the date of commencement of the said Act so as to clarify the position that the intention of the Parliament was not to include the registered and recognized political parties in the ambit of the Act. The making of amendment effective from the date of the commencement of the RTI Act would make the order null and void; whereas, in view of the following judgments only the order can be made ineffective.

13. The issue of validating statute or overriding enactment has been examined by the Supreme Court in a number of cases. In *Smt. Indira Nehru Gandhi vs. Raj Narain* (AIR 1975 SC 2299), the Supreme Court had observed that "retrospective validation is a well-known legislative process which has received the recognition of this Court in tax cases, pre-emption cases, tenancy cases and a variety of other matters. But in all of these cases, what the legislature did was to change the law retrospectively so as to remove the reason of disqualification, leaving it to the Courts to apply the amended law to the decision of the particular case".

14. In another case, the Supreme Court in *Comorin Match Industries (P) Ltd. Vs. State of T.N.* AIR 1996 SC 1916 held that the legislature ordinarily cannot reverse the decision of a court of law given in exercise of judicial power. The court further held that "it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or is based are so fundamentally altered that the decision could not have been given in the altered circumstances".

15. In *People's Union for Civil Liberties vs. Union of India* (AIR 2003 SC 2363), it has been held that "a declaration that an order made by a court of law is void is normally a part of the judicial functions. The legislature cannot declare that decision rendered by the court is not binding, void or is of no effect. The legislature can with retrospective effect change the basis on which the decision is rendered by a court and change the law in general". Thus, the validating Act or a provision may make ineffective the judgments and orders of competent court provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions. In other words, it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the court to arrive at the same verdict.

16. A draft Ordinance namely, the Right to Information (Amendment) Ordinance, 2013 has been modified in view of the observations made by the Department of Legal Affairs and a copy of the same is placed at F/X. In the draft Ordinance, instead of providing a proviso to clause (h) of section 2 of the RTI Act, it would be better to have the Explanation formulated in this Department for the reason that the

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purpose of the definition is to define the expression used and Explanation is another mode of defining the words and expressions. Further, the proviso suggested by the Department of Legal Affairs would confine only to the 52 recognized (National/State parties) out of 1444 political parties registered with the Election Commission as on 18.01.2013. This will bring in an incongruous situation, which could be avoided by adding the Explanation covering all the political parties registered with the Election Commission.

17. Subject to our observations made in paragraphs 12 to 16, we may also concur in the draft Note for the Cabinet.

**Legislative Department  
08/07/2013**

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The Department of Personnel and Training (the administrative Department) has forwarded a draft Note for the Cabinet seeking its approval to promulgate an Ordinance under clause (1) of article 123 of the Constitution to amend the Right to Information Act, 2005 (the RTI Act) so as to clarify that the political parties do not come within the ambit of the said Act, keeping in view the recent order passed by the Central Information Commission (CIC) bringing the political parties within the purview of the RTI Act.

2. It may be recalled that recently the CIC has passed an order in File Nos. CIC/SM/C/2011/001386 & 000838, dated 3<sup>rd</sup> June, 2013 bringing the political parties within the ambit of the RTI Act. The CIC in its order holds the view that political parties are substantially financed by the Central Government under section 2(h) (ii) of the RTI Act. The CIC has further observed that the role played by the political parties in our democratic set up and the nature of duties performed by them also point towards their public character bringing them in the ambit of section 2(h) of the RTI Act.

3. A draft Ordinance namely, the Right to Information (Amendment) Ordinance, 2013 was prepared and with the approval of Hon'ble MLJ sent to the administrative Department on 02.07.2013. The administrative Department considered the draft Ordinance forwarded by this Ministry and intends to revise the amendment proposed therein. The Explanation proposed in clause 2 of the draft Ordinance has been reviewed and suitably revised to reflect the intention of the administrative Department. A clear copy of the draft Ordinance is placed below for approval before it is sent to the administrative Department for taking necessary action.

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**Legislative Department**

**22/07/2013**

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The Department of Personnel and Training (the administrative Department) has forwarded a draft Note for the Cabinet seeking its approval to amend the Right to Information Act, 2005 (the RTI Act) so as to clarify that the political parties do not come within the ambit of the RTI Act, keeping in view the recent Order passed by the Central Information Commission (CIC) bringing the political parties within the purview of the RTI Act.

2. It may be recalled that recently the CIC has passed an order in File Nos. CIC/SM/C/2011/001386 & 000838, dated 3<sup>rd</sup> June, 2013 bringing the political parties within the ambit of the RTI Act. The CIC in its order holds the view that political parties are substantially financed by the Central Government under section 2(h) (ii) of the RTI Act. The CIC has further observed that the role played by the political parties in our democratic set up and the nature of duties performed by them also point towards their public character bringing them within the ambit of section 2(h) of the RTI Act.
3. With a view to annual any adverse effect of the said Order of the CIC, a draft Ordinance namely, the Right to Information (Amendment) Ordinance, 2013 was prepared and sent to the administrative Department on 02.07.2013. The administrative Department considered the draft Ordinance and intended to revise the amendments proposed therein. The explanation proposed in clause 2 of the draft Ordinance was reviewed and suitably revised to reflect the intention of the administrative Department. A copy of the revised draft Ordinance with the approval of Hon'ble MLJ was sent to the administrative Department on 08.07.2013, for further necessary action.
4. On 09.07.2013, the proposal of the administrative Department to place the revised Ordinance and the Cabinet Note before the Cabinet has been approved by the Hon'ble P.M. It is now proposed that instead of bringing an Ordinance, an amendment Bill may be introduced in Parliament.
5. Accordingly, a draft Bill namely, the Right to Information (Amendment) Bill, 2013 has been prepared and a copy of the same is placed below for the approval, before it is sent to the administrative Department.

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ANNEXURE – IV

(Refer to para 7.1, page 8 of the note)

	THE RIGHT TO INFORMATION (AMENDMENT) BILL, 2013	
	A	
	Bill	
	to amend the Right to Information Act, 2005.	
	BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:-	
	1. (1) This Act may be called the Right to Information (Amendment) Act, 2013.	Short title and commencement
	(2) It shall be deemed to have come into force on the 3 <sup>rd</sup> day of June, 2013.	
Amendment of section 2.	2. In section 2 of the Right to Information Act, 2005 (hereinafter referred to as the principal Act), in clause (h), the following <i>Explanation</i> shall be inserted, namely:—	22 of 2005
	<i>‘Explanation.—</i> The expression “authority or body or institution of self-government established or constituted” by any	

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	law made by Parliament shall not include any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951.”	43 of 1951.
Insertion of new section 32.	3. After section 31 of the principal Act, the following section shall be inserted, namely:—	
43 of 1951.	“32. Notwithstanding anything contained in any judgment, decree or order of any court or commission, the provisions of this Act, as amended by the Right to Information (Amendment) Act, 2013, shall have effect and shall be deemed always to have effect, in the case of any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951 or any other law for the time being in force and the rules made or notifications issued thereunder.”	Validation.